

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

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74-1214

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

Docket No 74-1214

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—v.—

ANCORP NATIONAL SERVICES, INC.,

Defendant-Appellant.

ON APPEAL FROM A FINAL JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLEE'S APPENDIX

PAUL J. CURRAN
*United States Attorney for the
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007
Attorney for Plaintiff-Appellee*

PAGINATION AS IN ORIGINAL COPY

Explanatory Note

This Appellee's Appendix has been prepared and will be filed in accordance with the Order of the Court of Appeals (per Judge Oakes), dated September 25, 1974. For ease of reference, this Appendix has been paginated beginning with 1084a, since the Appellant's Appendix covers pages 1a through and including 1083a. The deposition of Herbert Frilen was not marked as a trial exhibit; but the letter of transmittal from Delson & Gordon, Esqs., trial counsel for defendant Ancorp National Services, Inc., shows that the deposition was submitted by the defendant for the District Court's consideration. A memorandum from the Government's trial counsel to Judge Bonsal was affixed to the copy of the Newborn deposition submitted to the District Court (1090a). It indicates that the portions of the Newborn deposition deemed relevant by the Government were so marked in the transcript, as the Court had directed during trial (382a-383a, 1080a).

CERTIFICATION BY FEDERAL TRADE COMMISSION TO ATTORNEY GENERAL OF VIOLATIONS OF
CEASE AND DESIST ORDER (Letter of December 12, 1969)

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

1085a

AUL RAND DIXON
CHAIRMAN

DEC 12 1969

Honorable John N. Mitchell,
The Attorney General,
Department of Justice,
Washington, D. C. 20530.

Re: ANCORP National Services, Inc.,
F.T.C. Docket No. 7396.

My dear Mr. Attorney General:

Pursuant to the provisions of Section 16 of the Federal Trade Commission Act, the Commission hereby certifies the facts of violations of its order to cease and desist in the above-captioned matter. This certification is also a part of a program coordinated with the Antitrust Division through our liaison procedures that relates to the Justice Department's current interest in the activities of ANCORP National Services, Inc., and some of its officers and employees, and other persons with which it is associated.

The Commission has reason to believe, in certifying these facts, that ANCORP National Services, Inc., has violated provisions of the Commission's final order, and therefore recommends that appropriate proceedings be instituted for the recovery of civil penalties and certain equitable relief, as provided for in Sections 5(1) and 9 of the Federal Trade Commission Act.

The proposed suit results from original proceedings instituted by the Commission under Section 5 of the Federal Trade Commission Act against defendant for its inducement and receipt of promotional allowances from certain suppliers in connection with the resale and distribution of such suppliers' products on or through defendant's newsstands. The Commission's cease and desist order became final by operation of law on May 13, 1964. It prohibited defendant -

"in connection with the purchase in commerce
* * * of products for resale on newsstands
* * * from: [r]eceiving, or inducing and
receiving, or contracting for the receipt of
anything of value from any of their suppliers
as compensation * * * for display or promotional
services or facilities furnished by
or through [defendant] in connection with
the processing, handling, sale, or offering

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ANTI-TRUST

Honorable John N. Mitchell.

Page 2.

for sale of products purchased from any of their suppliers, when [defendant] know[s] or should know that such compensation * * * is not affirmatively offered or otherwise made available on proportionally equal terms to all [its] other customers competing with [defendant] in the sale and distribution of such suppliers' products."

Defendant is one of the largest operators of retail newsstands in the United States. Of the more than 500 newsstands operated throughout the country by this company, approximately 280 of such stands are located the New York Metropolitan area. Through economic leverage, this power buyer has been able to induce and receive discriminatory promotional allowances from New York City's three largest newspapers, the New York Times, the Daily News and the Post, which totaled over \$60,000, annually for the past five or six years. Such practices of defendant have been the subject of several newspaper articles in the Wall Street Journal and the New York Times, and a formal investigation by the Commission in September, 1969.

The Commission's investigation adduced evidence indicating that at the time the Commission's order became final (May 13, 1964) defendant was party to an agreement with the New York Times for paying to defendant a discriminatory allowance of \$2,587.20 per month for promotion and display in connection with the handling and sale of the New York Times on defendant's newsstands in New York and in other parts of the United States. Defendant continued to receive such monthly payments until June, 1969, when the New York Times terminated the said allowance arrangements.

Other evidence produced at the Commission's investigation showed that defendant exacted similar promotional monies from the New York Daily News from June, 1964, until March, 1969, in the amount of \$2000.00 per month, and from the New York Post in the amount of \$500.00 per month from July, 1964, until July, 1969. In both instances, the News and Post terminated payments on their own initiative.

Defendant's flagrant conduct in violating the Commission's order is well documented. Complete details of this conduct are contained in a trial memorandum accompanying this letter and substantiated by documentary and other evidence referenced therein.

Honorable John N. Mitchell.

Page 3.

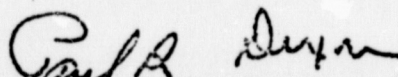
Transmitted herewith are the following:

1. Original and six copies of the draft complaint.
2. Original and three copies of the trial memorandum in support of the complaint, to each of which is attached copies of the following:
 - a. Transcripts in three parts of the Commission's Investigational Hearing.
 - b. Exhibits 1-7.
 - c. Commission's Investigational Exhibits 1 through 61.
 - d. Investigational Reports 1 through 6.

In addition to seeking the recovery of civil penalties for violations of a Commission order, this case is also being certified to obtain equitable relief in the form of an injunction commanding defendant to future compliance with the order to cease and desist. This relief is essential to insure that this matter remains within the District Court's continuing equity jurisdiction for possible contempt proceedings in the event the Commission's final order is again violated by defendant.

The Commission would appreciate being informed when the recommended case is filed or of other action that the Department may take with respect to this matter. We will be pleased to furnish any additional assistance that may be necessary for the processing and filing of this action. In connection with the meetings held earlier this year with the Antitrust Division, Commission attorneys familiar with the facts in this case are available to handle or to assist Department of Justice attorneys in the preparation and trial of this suit.

By direction of the Commission.


Paul Rand Dixon,
Chairman.

Enclosures. ✓

1 nss

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 vs.

8 ANCORP NATIONAL SERVICES, INC.,

9 Defendant.

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GOVERNMENT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

JUL 10 1973

10-10-73
63

70 Civ. 5770 DSR

June 7, 1973;
2.30 o'clock p.m.

Deposition on behalf of Plaintiff by
ROY I. NEWBORN, taken by Plaintiff, pursuant
to Notice dated May 30, 1973, held at the
offices of the United States Court House,
Foley Square, New York, N. Y., before
Nan Schwartz, a Shorthand Reporter and
Notary Public of the State of New York.

2
3 APPEARANCES:

4 PAUL J. CURRAN, Esq.,

United States Attorney,
Attorneys for Plaintiff;

5 By: GERALD A. ROSENBERG, Esq.,

6 NAOMI L. REICE, Esq.,
Of Counsel.7
8 EUGENE F. ROTH, Esq.,Attorney for Defendant,
230 Park Avenue
New York, N. Y.;9
10 By: EUGENE F. ROTH, Esq.,GEORGE HALPERN, Esq.,
Of Counsel.

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2 STIPULATIONS

3 IT IS HEREBY STIPULATED AND AGREED
4 by and between counsel for the respective parties
5 hereto that the sealing, filing and certification
6 of the within deposition be waived; that such
7 deposition may be signed and sworn to before any
8 officer authorized to administer an oath; that
9 all objections, except as to form, are reserved
10 to the time of trial.

11 ---

12
13
14 UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK

15 DATE: July 19, 1973

16 TO: Hon. Dudley B. Bonsal

17 FROM: Gerald A. Rosenberg

18 ☐ For Your Information
19 ☐ Approval / Signature
20 ☐ Per Conversation
21 ☐ Note and Return
22 ☐ Note and File
23 ☐ Please Reply (copy to me)
24 ☐ Report Action Taken

Please read all of trans-
cript except for sections
Marked "OMIT" in blue
magic marker pen.

1 nss

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4

2 R O Y I. N E W B O R N , called as a witness,
3 being first duly sworn by the Notary Public,
4 testified as follows:

5 EXAMINATION

6 BY MR. ROSENBERG:

7 Q Where do you presently reside?

8 A I reside in Duncansville, Pennsylvania.
9 Do you want my home address?

10 Q Yes.

11 A Town House 7, RD 2, Duncansville,
12 Pennsylvania, 16635.

13 Q Are you presently employed or self-employed?

14 A I am president of Newborn Enterprises,
15 Incorporated. That is the major firm that I am
16 with.

17 Q What is the nature of that firm's business?

18 A We are wholesale distributors of newspapers,
19 magazines and paperbacks, generally in central
20 Pennsylvania.

21 Q Could you describe the approximate limits
22 of the territory within which you distribute?

23 A If you use Altoona as the center point we

20 miles east, 60 miles

40 miles south.

2 Q Does your news agency own any retail
3 outlets where magazines or newspapers are sold?

4 A The agency does not. I am president
5 of another company that does.

6 Q What is the name of that other company?

7 A The Book Store, Incorporated.

8 Q Where is its principal office?

9 A 808 Green Avenue, Altoona, Pennsylvania.

10 Q How many retail outlets does The Book Store
11 own?

12 A Two.

13 Q Where are they located?

14 A One is in 808 Green Avenue and the other is
15 in Grant Plaza, Huntingdon, Pennsylvania.

16 Q What articles are sold at these two
17 retail outlets?

18 A Every magazine, newspaper, paperback that
19 we distribute is represented in those stores, every
20 title.

21 Q Do you carry any newspapers published in
22 the New York City area at either of those outlets?

23 A From New York City we carry the New York
Times, Daily News, The Voice, Women's Wear.

Q That is The Village Voice and Women's

2 Daily?

3 A They put out a weekly newspaper now that
4 is published by them. I think it is called WWD.

5 Q In the course of your business trans-
6 actions at the Altoona News Agency do you have
7 occasion to deal with the American News Company or
8 Ancorp National Services, Inc.?

9 A Not at all.

10 Q How long have you been associated with
11 the Altoona News Agency?

12 A It will be five years July 1st of this
13 year.

14 Q Have you always been president of the
15 company?

16 A Yes.

17 Q What did you do prior to becoming president
18 of the Altoona News Agency? Could you briefly
19 summarize your working history?

20 A Yes, in 1937 I joined the Herald Tribune
21 in the circulation department as a city inspector and
22 I rose in rank up to being city circulation manager.
23 I left the Herald Tribune in 1956,
24 almost twenty years later, to become circulation

2 York Post for approximately four years up to about
3 1961 when I rejoined the Herald Tribune as its
4 circulation director. I stayed with them until
5 1964.

6 I then left them on July 1, 1964 to
7 become the circulation director of the Boston Herald
8 Travel Corporation and stayed with them until 1968
9 where I then made the purchase at that time of the
10 Altoona News Agency.

11 Q During the period of your first employ-
12 ment by the New York Herald Tribune for the years
13 1937 to 1956, approximately, were you familiar with
14 the means by which the Herald Tribune sold copies
15 of its newspapers in the metropolitan New York area?

16 A Very well.

17 Q Could you describe the process of the
18 sale and distribution during those years?

19 A There are two methods of selling a
20 publication in this market. One is a direct means
21 where the publisher, like the Herald Tribune and

22 it was the Herald Tribune, would sell directly to
23 the retailer or on an indirect basis where the
Herald Tribune would sell to a middleman like I am

24

2 sell to the retailer.

3 Q Can you recall the names of any of the
4 retail outlets or chains of retail outlets with which
5 the Herald Tribune dealt in those years; namely
6 1937 to 1956?

7 A Union News Company, Garfield News Company,
8 Eastern News Company. I would say they were the
9 principal people that offhand I remember at this
10 moment.

11 MR. ROTH: What years did you say?

12 MR. ROSENBERG: 1937 to 1956.

13 Q Were you familiar with the business
14 arrangement that existed between any of these chains
15 ^{of} ~~at~~ retail stands and the Herald Tribune?

16 A I would say that any area that would be
17 my responsibility I would be familiar with. Up to
18 1957 I was the city circulation manager so that I
19 would say that I would be familiar with following
20 the instructions of the director of the department.

21 Q Who was the director of the department
22 when you were city manager?

23 A Mr. Barnie Cameron, Mr. Lester Zwizk.
I was appointed by Richard Pinkham as city circulation

2 date of that at this point.

3 Q As city circulation manager in the last
4 year of your first tenure with the New York Herald
5 Tribune were you familiar with the basis that the
6 Herald Tribune dealt with each of these retail news
7 outlets?

8 A Yes, I would say it was my responsibility,
9 yes. I would be.

10 Q Could you describe the business basis of
11 these relationships between the retail outlets and
12 the Herald Tribune?

13 A Could you be a little more specific?
14 Are you talking about the ones we
15 mentioned?

16 Q Union News, Garfield News, Eastern News,
17 the chains.

18 A Right. We delivered to them either on a
19 direct or indirect basis. Where our driver
20 delivered to Garfield and American News we had a
21 pink slip procedure or receipt. I do not think
22 we had it with Eastern News.

23 Q Could you describe how the pink slip
24 system worked?

Newborn

1 nss

2 when he delivered a certain amount of papers which
3 were generally required by the stands. He would
4 receive a pink slip with the exact amount of papers
5 written by number and by letter. It was just as
6 you write a check, 14 and a number and also written
7 by the word fourteen. That slip at the end of the
8 evening would be turned in by the driver as if he
9 had collected cash, a cash payment for the papers.

10 Where a driver would collect on his
11 entire route it was generally on the night editions
12 he would come up to the cashier, give to the
13 cashier money and the pink slip which would repre-
14 sent the exact amount of papers that he sold for that
15 night.

2

16 Q Was there any indication on the pink
17 slip of how many papers were returned by the news-
18 stands dealers from the day before?

19 A Yes, there was. The slip did carry a
20 return column so it did represent the net for the two-
21 day period, 24-hour period. In some cases that slip

22 would be held in the stands for a week where the
23 driver paid us on a weekly basis.

24

Q How did the pink slip get to the
accounting department of the News-Record?

1 nss

2 A Yes, and submitted. We charged back
3 to Union News.

4 Q How frequently did the Herald Tribune bill
5 any of the retail outlet chains:

6 Union News, Eastern News, Garfield News
7 or any others that you can recall?

8 A We had a weekly billing system. I do
9 know we went to a monthly system, but I could not
10 tell you or define the exact period. I think we
11 went to the monthly system when we went over to a
12 computer. Generally, it was on a weekly basis.

13 Q While you were New York City circulation
14 manager of the Herald Tribune in the middle '50s it
15 was the practice of the Herald Tribune to bill each
16 of the retail news outlet chains on a weekly basis?

17 A Yes.

18 Q Was the basis of the bill the number of
19 copies delivered to the stands?

20 MR. ROTH: Does that apply to all three
21 of the chains that he mentioned?

22 Q Does this billing practice apply to all
23 three of the chains that you mentioned:

24 Eastern News, Garfield News, Union News?

25

26 A Yes, it was all accounted for.

2 wholesale or direct deals, yes.

3 MR. ROTH: Eastern used the pink slip
4 method?

5 THE WITNESS: Eastern, I do not think
6 used it. They paid cash.

7 Q Mr. Newborn, the ^{basic} ~~base~~ of the bill which
8 the Herald Tribune tendered to Union News Company
9 was that based on the number of copies delivered to
10 the stands less the number returned times some fixed
11 price per copy of the newspaper?

12 A Yes. The bill rendered was for the
13 number of papers totally received and for which we
14 had attached with the bill the pink slips to support
15 that billing. I do not remember whether the returns
16 were listed on that bill, but certainly the net charge
17 was for the net papers sold.

18 Q The price to Union News was a fixed cost
19 per paper times the net number of papers delivered to
20 Union News, is that right?

21 A That is correct.

22 Q Was there any difference between the
23 billing practice that the Herald Tribune had with

24 Union News Company and the billing practice of

2 A Except for the pink slip it was not
3 different.

4 Q The pink slip was only used with Union
5 News and Garfield News?

6 A He brought up the Eastern News. The
7 Eastern News, when I spoke about them before, if it
8 was delivered at night, night papers were a cash
9 basis. Papers that are delivered in the morning
10 are dropped at the location. The account is not
11 opened and for that reason the driver would have to
12 return to that location and pick up a pink slip.
13 At times the pink slip was sent to us by the location.

14 In the case of Eastern News we would bill
15 them for their morning papers as we billed any other
16 dealer. At night, of course, everything was --
17 the pink slip was received or cash was received;
18 whatever the account was.

19 Q Do you recall the price per copy of the
20 daily Herald Tribune that was charged to any of the
21 retail outlets in the years when you were the city

22 circulation director?

23 A I can only recall because I was on two or three

24 different papers here. I think the price to the

2 I think in the eastern field it was \$3.80. That is
3 why I am a little confused.

4 Q The price you just quoted, whether it
5 was \$3.75 per hundred or \$3.80 per hundred, was that
6 a price that was uniformly charged by the Herald
7 Tribune to all of the retail chain outlet?

8 A In the city zone?

9 Q In the city zone.

10 A It was.

11 Q In the years when you were city manager
12 of circulation for the New York Herald Tribune was
13 there any price allowance agreement with any of the
14 retail newsstands outlets?

15 A Absolutely not.

16 Q Was there any price concession?

17 A Absolutely none.

18 Q Was there any retail display allowance?

19 A Absolutely none.

20 Q Was there any agreement however
21 designated with any of the retail newsstands provid-

22 ing that the chain would acquire the newspapers from
23 the Herald Tribune for less than the standard price?

2 service?

3 A Absolutely none.

4 Q I believe you testified that in approx-
5 imately 1956 or 1957 you left the Herald Tribune
6 to go to the New York Post?

7 A Yes.

8 Q What position did you occupy?

9 A Circulation director.

10 Q Did you hold that position for the entire
11 period you were employed by the Post?

12 A Yes.

13 Q Could you describe how the Post sold or
14 distributed its papers in the New York metropolitan
15 area?

16 A The Post had a wider range of direct
17 delivering because an afternoon newspaper necessitates
18 that type of delivery. We redelivered to the stands
19 with our own drivers, a far greater area, the driver
20 would accept a pink slip or the net amount of moneys
21 supporting his sale and the credits that he gave for
22 returns.

23 Q Is this system of distribution and collection

24 described the system that the

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2 stands outlet in the New York City area, to the best
3 of your recollection?

4 A Except the news. There we received
5 money instead of a pink slip. Otherwise, we
6 received cash from everyone.

7 Q Was the pink slip system that the New York
8 Post used in the years 1956 through 1960 essentially
9 the same as the pink slip system that the Herald
10 Tribune used during a slightly earlier period?

11 A Yes.

12 Q Do you recall the price at which the New
13 York Post sold copies of its papers to retail news
14 outlets in the years when you were in the circulation
15 department there?

16 A To the best of my knowledge it was \$3.80
17 per hundred copies.

18 Q Was this a standard price, a uniform price,
19 charged to all retail news outlets?

20 A Yes.

21 Q Can you recall the names of any of the

22 chains of retail outlets to which the New York Post
23 sold papers in those years?

2 Q Did it also deal with individual
3 proprietors of newsstands who were not members of
4 stands?

5 A Of course.

6 Q In the period when you were at the Herald
7 Tribune up until 1956 did the Herald Tribune also
8 cause its papers to be sold to individual proprietor
9 newsstands as well?

10 A Yes.

11 Q Returning to the New York Post, were there
12 any agreements with any of the news stands outlets
13 that were in the nature of price allowances or price
14 concessions from the New York Post?

15 A None; absolutely not.

16 Q Were there any retail display allowance
17 agreements with any of the newsstands outlets?

18 A Absolutely none.

19 Q Were there any agreements however
20 designated or denominated by the retail stands out-
21 lets by which the retail stands outlets were able

22 to buy the New York Post from the Post for less than
23 the standard amount of money in consideration for

2 A Everybody paid the same price.

3 Q During your tenure at the New York Post
4 did you have occasion to meet with any of the
5 executive officers of the Union News Company?

6 A Yes, both officially and unofficially.

7 Q Who were those people? Who were the
8 executive officers of the Union News Company whom
9 you had occasion to meet either officially or un-
10 officially?

11 A Henry Garfinkel, Bill McCollough.

12 Q Do you know the positions that each of
13 these men held in the years or the approximate respons-
14 ibilities that they had?

15 A Henry Garfinkel was president of the Union
16 News or American News.

17 Bill McCollough, I do not know whether at
18 that time Bill was vice-president, but I do know he
19 was Henry's number one assistant.

20 Q Were there any other officers or executives
21 of Union News that you came to meet during your years

22 at the Post?

23 A I would say a number of times I met with

24 many executives of the Union News or American News.

2 knew well. I could not at this moment recall of
3 American or Union News.

4 Q Can you remember the circumstances of any
5 meetings with Mr. Frankel or Mr. McCullough during
6 these years?

7 A Any meetings?

8 Q Yes.

9 A Yes.

10 Q Could you recall any meetings that dealt
11 with circulation matters or anything else within
12 your jurisdiction?

13 A I cannot be specific. I do know that we
14 often discussed the possibility of retail display
15 allowances.

16 Q When you say we, whom do you mean?
17 Who are you encompassing by that pronoun?

18 A I did have a discussion with Henry some-
19 wheres in that area. It was a very friendly one
20 and I did take it up with the publisher.

21 Q The publisher of the New York Post?

22 A Yes.

23 Q Who is that?

24 A Dorothy ...

2 circumstances of your discussion with Mr. Garfinkel
3 about the proposed retail display allowance?

4 A I do know this: This did become an issue
5 or a discussion since it appeared that our competition,
6 when I say our, another paper or papers in New York
7 had come to some type of agreement. Financially we
8 felt that the New York Post could not afford any
9 consideration and we didn't even entertain it. I did
10 take it up with the publisher.

11 Q Mr. Newborn, may I interrupt you for a
12 second. To make the record absolutely clear, I
13 believe you testified that it came to be your under-
14 standing ^{while} why you were at the Post that some or all
15 of the other New York City newspapers had reached
16 an agreement with the Union News Company for a retail
17 display allowance?

18 A It was my belief that there was some dis-
19 cussion on other newspapers paying something. I can-
20 not be specific.

21 Q Did you at that time have any knowledge of
22 an existing retail display allowance agreement between
23 Union News and any of the New York newspapers?

24 A I can say this to be more specific.

2 I think in those words we discussed it as an
3 advertising allowance. There was a discussion
4 where a couple of other papers, the Times and the
5 News, had come to some kind of an arrangement.

6 Q Can you remember any specific meeting
7 or conference or telephone call or exchange of
8 letters with other newspapers regarding an advertis-
9 ing allowance or a price allowance or a retail dis-
10 play allowance with Union News?

11 A No. I might be unfair to say I did not,
12 but I cannot recall specifically that I discussed
13 this with the other papers.

14 Q How did it come to pass that you dis-
15 cussed this question with a representative of Union
16 News? Did you approach Union News on behalf of the
17 New York Post to discuss a retail display allowance?

18 A Never to give money away.

19 Q What were the circumstances surrounding
20 whatever discussions you did have with the Union News
21 officers or representatives?

22 A I think Henry and I had discussed this
23 advertising allowance. I did take it up with

2 who raised the subject?

3 A I assure you I did not.

4 Q By a process of elimination can we say
5 that Henry raised it?

6 A I think so.

7 Q What did he propose to you?

8 A For some advertising services, display of
9 placards and advertising materials he wanted some
10 additional money. That is, advertising and display
11 materials for the stands.

12 Q Can you remember the approximate time
13 when these discussions with Mr. Garfinkel took place?

14 A No, I cannot.

15 Q Was it towards the beginning or possibly
16 the end of your period at the Post?

17 A I would say it was entirely possible
18 towards the end.

19 Q You left the Post in 1960?

20 A I left the Post. If you go back, I was
21 at the Post later. I have to think back on those

22 dates.

23 Could you please repeat the question?

24

2 1960?

3 A No, I was at the New York Post later than
4 that.

5 MR. ROTH: I thought you said you were
6 at the Post from 1956 to 1961?

7 THE WITNESS: That is correct.

8 Q You believe it was towards the end of your
9 stay at the New York Post that you had the discussion
10 that you have described with Mr. Garfinkel regarding
11 a proposed display allowance or advertising allow-
12 ance?

13 A Yes, because there was no conclusion as
14 far as I was concerned. It was just a forgotten
15 matter.

16 Q Was there more than one discussion with
17 Mr. Garfinkel?

18 A I could not tell you. With myself, I
19 could not tell you.

20 Q After you had the discussion with Mr.
21 Garfinkel did you take the matter up with Mrs. Shiff?

22 A Yes.

23 Q What did she say to you?

24

2 proposal?

3 A We could not afford even considering it.

4 It was no.

5 Q Did she tell you to speak to Mr. Garfinkel
6 regarding the proposal or did she tell you she
7 would speak with him?

8 A I do not know how many discussions took
9 place, but I do know Mrs. Shiff personally spoke to
10 Mr. Garfinkel about this. I do know that there
11 was no consideration given.

12 Q As long as you were in the circulation
13 department at the New York Post, the Post did not
14 pay a display allowance to the Union News, is that
15 correct?

16 A To the best of my knowledge, we did not at
17 that time.

18 Q Did you pay any allowance to any of the
19 other retail outlets, chains or individuals?

20 A We did not.

21 Q Were you approached by the proprietors of

22 any other chains or individual outlets concerning a
23 retail allowance or a display allowance?

24 A We were not. I was not.

2 approximately, you received a letter or a letter
3 came to your attention written by Mr. Morris Strassman
4 on the stationery of the Union News Company addressed
5 to you or some other person in the circulation depart-
6 ment at the New York Post concerning an agreement
7 that the Union News Company had entered with Local
8 906 and District 65 representing sales help and
9 newsstands and stating to you at the New York Post
10 that there would be a need to raise the retail price
11 of the paper because of an increased labor cost to
12 the Union News? Do you remember receiving such a
13 letter or seeing such a letter?

14 A I remember. I do not know whether I
15 was at the Post or the Herald Tribune when a letter
16 and an intent on the part of Union News was made.
17 We had a very firm feeling about any prices,
18 retailer, our counsel did.

19 Q Are you speaking now of you and your
20 colleagues at the New York Post?

21 A I remember this letter and I remember

22 discussing it with counsel. We just remained in a
23 hands-off position.

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A Our counsel. I do not know whether that letter came to me.

What is the date?

Q January 19, 1960.

A I must have been with the New York Post at the time. Our prices at retail level was the total concern of the retailer.

Q Can you recall the name of the counsel with whom you discussed this question?

A No, I could not. If it was the Post it would have been -- I do not remember. I forgot.

Q What happened when you left the New York Post? Where did you go when you left the New York Post?

A I became circulation director of the paper I had left, the Herald Tribune.

Q Who asked you to return to the Herald Tribune?

A I was asked by Robert MacDonald, then senior executive vice-president of the Herald Tribune.

Q What position did you occupy when you returned to the Herald Tribune in 1960 or 1961?

Circulation rep.

OMIT



2 system of distribution or the pricing policy or the
3 agreements with the retail news outlets when you
4 returned some four or five years later?

5 A There were none. Whether the retail
6 price went up or not, I do not remember. I do know
7 that the policy was the same.

8 Q Was the pink slip system still in effect?

9 A It was.

10 Q Was it still in effect with the same
11 chain outlets?

12 A It was.

13 Q Eastern News was still a cash basis
14 operation?

15 A To the best of my knowledge now, yes, it
16 was.

17 Q Were there any price allowances or price
18 concessions that the Herald Tribune was then paying
19 to any of the retail outlets at the time you returned
20 in 1960 or so?

21 A In the city zone, no.

22 Q Was the Herald Tribune paying any price
allowance to retail outlets outside the metropolitan

24 New York City area to the best of your recollection?

2 given to people who secured their papers from a depot
3 and ran five or ten miles for it. That was really
4 not the price differential. This was a transport-
5 ation allowance. Other than that, no.

6 Q When you speak of the metropolitan New
7 York City area or the city zone, what were the limits?
8 What was the geographical area covered by it?

9 A I would say the 50 miles radius from
10 New York, which is the city and suburban.

11 Q Beyond that area it was the practice of
12 the Herald Tribune to pay distributors or wholesalers
13 some allowance for the cost of transporting papers,
14 is that correct?

15 A Yes. The prices also differed if it
16 was air delivered.

17 Q Did you have occasion to meet with any
18 officers or representatives of Union News during
19 your second period at the Herald Tribune?

20 A Yes.

21 Q Who were the people you met with?

22 A The same people: Henry and Bill.

23 You mentioned Morris Strassman. That

2 Union News or American News?

3 A I think he became a vice-president.

4 He was generally the person in charge of newspaper
5 operations.

6 Q Did you deal with him when questions
7 arose about circulation problems of the Herald Tribune
8 vis-a-vis Union News?

9 A I did not, but the department head did.
10 As a circulation director I did not. As a city
11 circulation manager, going back, I did.

12 Q When you returned to the Herald Tribune
13 as circulation director -- have I correctly named your
14 position?

15 A Correct.

16 Q Who was directly above you? Who did you
17 report to?

18 A Robert MacDonald, executive vice-president.

19 Q Who was above him on the chain of command?

20 A Walter Thayer.

21 Q What position did he occupy?

22 A I think Walter Thayer was listed as
23 publisher.

24 Q Who were the people within the circulation

2 A Who were the people within the department?

3 Q In 1961 to the 1964 period who was
4 directly under you in circulation?

5 A That is an awful lot of names.

6 Q Who was the man who would have dealt with
7 Morris Strassman at Union News?

8 A Albert von Entress, a gentleman by the
9 name of Nick Priory, Mr. Joseph Glickman. They are
10 the principals or the department heads that would
11 cover the city, suburban and country zones.

12 Q In that order?

13 A They were the managers, right.

14 Q I think I interrupted you a couple of
15 minutes ago when you were beginning to explain that
16 you knew Mr. Garfinkel both officially and unofficial-
17 ly. This went back to the period of your first
18 stay with Herald Tribune. Did you have a social
19 as well as business relationship with him?

20 A I had a friendly relationship with Mr.
21 Garfinkel. I knew him practically all the years
22 that I had been in the newspaper business.

23 Q Did you and your wife ever have occasion

24 only when I was with the Boston Herald

1 Traveler.

2 Q Did the ^{four} ~~cou~~ of you ever meet together
3 at social functions, luncheons?
4

5 A Yes. We had met at industry functions.
6 When you say social, is that what you meant?

7 Q Yes.

8 A Yes, industry functions we did meet.
9 Our wives did meet.

10 Q In other words, you did see Mr. Garfinkel
11 on other occasions than when you dealt with him
12 across the desk concerning the New York Herald Tribune
13 with the New York press circulation problems?

14 A Yes, I have very fond memories.

15 Q Did you meet with Mr. Garfinkel when you
16 were circulation director of the New York Herald
17 Tribune in the early '60s on a business business?

18 A Yes, I did.

5 19 Q Can you describe, if you recall, any of
20 the meetings that you had with Mr. Garfinkel, business
21 meetings in these years?

22 A I do recall very specifically the meeting
23 which I assume is the intent of my being here.

24 I did have a business meeting, luncheon with Mr.

2 1963.

3 Q Can you fix a date for that meeting?

4 A May 23, 1963.

5 Q Are you reading out of some book now?

6 A Yes, I am reading out of my diary that
7 I kept.

8 Q Does that diary reflect that you had a
9 luncheon meeting with Henry Garfinkel on the date
10 you just mentioned?

11 A Yes, it does.

12 Q Can you recall the substance of the con-
13 fersation you had with Mr. Garfinkel on that date?

14 A I was directed by my boss to meet with
15 Henry.

16 Q Who was your boss?

17 A Bob MacDonald and Walther Thayer were both
18 in on the discussions. That is how that specific
19 luncheon was arrived at.

20 Q Mr. Newborn, did you have a meeting with
21 Mr. Thayer and the other gentleman who was above you
22 at the Herald Tribune at which time there were some

23 discussion of your meeting with Mr. Garfinkel?

24 A Mr. Garfinkel was interested in meeting

2 Q How did you come to know that?

3 A They told me so.

4 Q When did they tell you?

5 A At this meeting which was by the way at
6 a luncheon at the Herald Tribune that I had with both
7 of these men.

8 Q You had two meetings; one you mentioned
9 with Henry Garfinkel on May 23, 1963 and a prior
10 meeting with Walter Thayer? Can you give the
11 date of that prior meeting?

12 A Monday, May 20.

13 Q Are you looking at your 1963 personal
14 diary to refresh your recollection of that date?

15 A Yes.

16 Q Does it reflect a luncheon meeting with
17 Mr. Thayer of that meeting?

18 A It does.

19 Q Can you recall the substance of the
20 conversation you had with Mr. Thayer?

21 A One of the areas we discussed was that

22 Henry was very anxious to meet with Mr. Whitney.

23 Q Did he bring it up with you or did you

24 bring it up with him?

2 for the meeting was to discuss what was possible,
3 what would possibly be something that would put us
4 at a competitive disadvantage, advertising allowance.
5 The Herald Tribune and when I say the Herald Tribune,
6 Mr. Thayer and Mr. MacDonald, were quite concerned
7 that this allowance might be necessary in order to
8 compete equally with the New York Times on the news-
9 stands where we both sold our papers.

10 Q What did Mr. Thayer mean when he said
11 that the Herald Tribune had to compete with the paper?
12 What was he referring to?

13 A He was concerned that we might have to
14 meet an advertising allowance requirement so that
15 we would be able to advertise, to display our news-
16 papers equally with other publishers who had already
17 agreed to some kind of an allowance.

18 Q What did you believe at the time of your
19 meeting with Mr. Thayer, in May of 1963, was the
20 nature of the agreement, if any, that other newspapers
21 had with Union News?

22 A Could you please repeat the question?

23 (Question read.)

24 A I could not believe anything because I

2 what they were getting or what agreement they had.
3 I did not know what the New York Times agreed to
4 at that time.

5 Q In May of 1963 when you and Mr. Thayer
6 and the other chief executives of the Herald Tribune
7 were meeting to discuss the possibility of reaching
8 an agreement with Henry Garfinkel, did you then
9 believe the New York Times had previously reached
10 some kind of an agreement with Henry Garfinkel and
11 the Union News Company?

12 A That is too positive a statement that
13 you are making.

14 Q Qualify it in any way that you need to.

15 A I was told that Mr. Garfinkel wanted to
16 meet Mr. Whitney to discuss some kind of an allow-
17 ance and this type allowance had been arrived at with
18 the New York Times. Whatever I felt would be in
19 the best interest of the Herald Tribune, taking into
20 consideration that we would not want to be in any
21 manner, shape or form, not on an equal competitive

22 terms to arrive at a fair settlement for whatever

the competing factors were with Mr. Garfinkel.

Q The New York Herald Tribune was a morning

2 A That is correct.

3 Q Published on a daily basis?

4 A Correct.

5 Q Who is the chief competitor of the
6 Herald Tribune?

7 A The New York times.

8 Q Was it your concern as the circulation
9 director of the New York Herald Tribune that the
10 Herald Tribune be prominently displayed at news-
11 stands?

12 A Absolutely.

13 Q Did the Herald Tribune get good display
14 at newsstands?

15 A It did.

16 Q Did it get good display at the Union News
17 stands?

18 A Yes.

19 Q To the best of your knowledge did the
20 New York Times get good display at Union News stands?

21 A Yes.

22 Q And that other stands did get good display
23 as the Herald Tribune did?

24 A Yes, it did.

2 had reached any agreement with Union News Company
3 concerning a display allowance, is that correct?

4 A Or advertising allowance, yes.

5 MR. ROTH: I have not complained about
6 your leading questions because I think their defect
7 will be sufficiently evident at the trial, but I
8 think you ought to watch it in some way. It is up
9 to you. You do it any way you want.

10 MR. ROSENBERG: I want to be absolutely
11 clear that we are using the same ^{stipulations} standards as in any
12 deposition.

13 MR. ROTH: Have we reserved as to form?

14 MR. ROSENBERG: No.

15 MR. ROTH: Exactly. If I reserve it I
16 would not have mentioned it. I am not objecting
17 as to form because I think the questions are sufficient
18 that they will be more prejudicial to you if I did
19 object. I mention it to you as a matter of record.

20 MR. ROSENBERG: Let me make sure we both
21 understand.

22 MR. ROTH: There is nothing to make sure
23 of. You go along any way you want.

24 MR. ROSENBERG: May I put the standard

2 ground rules are on this deposition?

3 MR. ROTH: I did not know this.

4 MR. ROSENBERG: Did you stipulate that
5 all objections as to the time, place and manner of
6 taking this deposition are waived?

7 MR. ROTH: GO ahead.

8 MR. ROSENBERG: Would you further stipulate
9 that all objections except as to form are hereby
10 reserved?

11 MR. ROTH: Yes, we agreed to that long
12 ago.

13 MR. ROSENBERG: What I am driving at is
14 that you absolutely reserve your objections to
15 relevancy, hearsay and et cetera. As to form it
16 is hereby waived unless raised now.

17 MR. ROTH: I mentioned that at least three
18 times.

19 Q What was the substance of your conversa-
20 tion with Mr. Thayer and the other executives of the
21 Herald Tribune at the meeting that you had with them
22 in May of 1963?

23 A One of the subjects was that Mr. Garfinkel
24 wished to meet with Mr. Whitney

2 of advertising allowance that he was trying to
3 obtain and that an allowance, if given by the Herald
4 Tribune, would put us in equal competitive position.

5 MR. ROTH: Just a minute. Read that
6 back. Who said what?

7 (Answer read.)

8 MR. ROTH: Is that the conversation of
9 Mr. Garfinkel?

10 THE WITNESS: No, he asked what happened
11 at the luncheon.

6 12 MR. ROSENBERG: I asked Mr. Newborn what
13 he discussed with Mr. Thayer and the other executives
14 at the Herald Tribune. I was referring to the
15 luncheon meeting he had on May 20th.

16 MR. ROTH: The answer incorporates in
17 part and no one knows where it begins or ends with
18 the conversation with Mr. Garfinkel. I think the
19 answer is not responsive and I object to it and ask
20 that it be stricken out.

21 MR. ROSENBERG: There is no judge present.

22 Since we do not know how he will rule, let me ask
23 you again.

24 the one in, Mayor of the other New York.

2 your May 20th meeting?

3 A I cannot repeat the quote ten years
4 later.

5 Q In substance.

6 A Mr. Garfinkel through some source had
7 made a request to meet with Mr. Whitney.

8 Q This is what Mr. Thayer or the gentleman
9 told you?

10 A That is what Mr. Thayer or Mr. MacDonald
11 told me at that luncheon. They, Thayer or MacDonald,
12 heard that one of the subjects was a consideration
13 for advertising allowances that had been arrived at
14 with our competitor, the New York Times.

15 Mr. Thayer or Mr. MacDonald, one or the
16 other, expressed a great concern that this might put
17 us in a very uncompetitive position and that Mr.
18 Whitney did not want to meet Mr. Garfinkel. I should
19 immediately contact Mr. Garfinkel and make arrange-
20 ments to meet with him and to discuss this allowance.

21 Q Was there any further conversation between
22 you and Mr. Thayer at this meeting?

23 A Concerning this subject, no. I then
24 followed orders.

2 A I met with Mr. Garfinkel two days later.

3 Q I believe you testified that your meeting
4 with Mr. Garfinkel was on May 23rd, 1963.

5 A Yes, I was invited to lunch. It was
6 the first time I was at his office.

7 Q You met at Mr. Garfinkel's office?

8 A That is right.

9 Q Where was that?

10 A At Varick Street.

11 Q Can you remember when the luncheon meeting
12 occurred, the time?

13 A During the normal lunch period.

14 Q Can you remember the substance of your
15 conversation with Mr. Garfinkel at that meeting?

16 A There were many subjects. I was about to
17 take off for the West Coast and it was at this meeting
18 he graciously assisted me in getting rooms in Las
19 Vegas. We discussed generally the problems of the
20 industry. He then discussed with me an advertising
21 program whereby on a competitive basis the Herald

22 was working on an arrangement with Union News
23 Company for display allowances or advertising allow-
24 ances.

2 the advertising allowance or display allowance or
3 did you raise the subject?

4 A I do not know whether he did or I did,
5 but since I had been directed to this luncheon, the
6 purpose of finding out about this allowance, I do
7 not ^{know} whether he said it to me or I said it to him.

8 Q Did he make any proposal to you?

9 A He made a proposal, but I cannot quote
10 it the way Henry discussed it with me. I do know
11 we came to a financial arrangement.

12 Q What was that arrangement?

13 A On an annual basis, to the best of my
14 knowledge that I can recollect, we were to pay on a
15 monthly basis a fee totaling \$15,000 a year. Now,
16 it might be \$12,000 or it might be 15,000, but at
17 this point I do not know. I do not have my notes
18 of that meeting. I do not think they are even
19 available.

20 Q What was the consideration for the
21 proposed payment of \$15,000 or \$12,000 per year by

22 the Herald Tribune to the Union News?

23 A Placards, advertising means to be placed
24 up on all their stands.

2 A Let me finish. Equal display consider-
3 ations.

4 Q Let's take each one by one.

5 Prior to this meeting was it the practice
6 of the Herald Tribune to post placards at any news-
7 stands anywhere?

8 A Yes, where the account allowed us, yes.

9 Q Did your account with the Union News
10 Company permit you to put up placards up at the
11 Union News Company stands prior to this arrangement
12 with Mr. Garfinkel?

13 A Could you please repeat that?

14 Q Did ^{your} ~~you~~ account with the Union News
15 Company prior to this agreement permit you to put
16 placards up at Union News stands?

17 A My agreement with Union News. We never
18 had an agreement. I assume my road men put up
19 signs.

20 Q I do not want you to assume anything.
21 Just testify as to what you know, heard or saw.

22 Do you know now whether prior to 1963
23 the Herald Tribune put up placard at Union News

24

2 Q Prior to 1963 did you pay Union News
3 for any amount of money for the right to put placards
4 up at their stands?

5 A We did not.

6 Q From time to time was there ever a dispute
7 concerning your right to put placards up at their
8 stands?

9 A I cannot recollect.

10 Q What did those placards say? What were
11 they all about?

12 A We would put up signs or placards, what-
13 ever you wish to call them, on advance features
14 announcing coming features, spot news stories or
15 Sunday features.

16 Q In the Herald Tribune?

17 A That were coming in the Herald Tribune.

18 Q Who manufactured the posters?

19 A We did.

20 Q At whose expense?

21 A The Herald Tribune.

22 Q Who distributed the posters?

23 A The Herald Tribune did.

24 Q What did the newsstands furnish for you?

2 A Quote, permission.

3 Q You bought advertising space, is that
4 right?

5 A We bought the right to advertise.

6 Q The second item that you said you agreed
7 to with Mr. Garfinkel was that the Herald Tribune
8 would purchase advertising. What did that refer to?

9 MR. ROTH: He just got through.

10 A The right to advertise. The right of
11 putting up of placards.

12 Q Just to refresh your recollection you
13 said that in consideration for the payment of
14 \$15,000 or \$12,000 a year was placards, ads and
15 equal display. By ads or advertisements you meant
16 the posting of the placards?

17 A Yes.

18 Q Could you explain by what you mean by
19 equal display? What was it that you were buying?

20 A I do not think we were buying anything
21 on display, really. I never had a problem of where
22 the papers were placed on the stands.

23 Q What does equal display refer to?

24 A The paper was placed on the stands.

2 A After your meeting with Mr. Garfinkel
3 did you return to the Herald Tribune to discuss
4 the offer with anybody else at the Herald Tribune?

5 A Yes. I know of a memorandum because
6 that was always a procedure. I take that back.
7 I wrote a memorandum of the agreement that I had
8 reached with Mr. Garfinkel.

9 Q Do you have a copy of that memorandum?

10 A No, I do not.

7 11 Q Have you looked in your records for such
12 a memorandum?

13 A I did not carry any records with me from
14 the Herald Tribune, I am sorry to say.

15 Q Who is the memorandum addressed to?

16 A The only one it could have been addressed
17 to , Mr. Robert MacDonald.

18 Q It was your ordinary business practice
19 to send him memorandas concerning business agreements,
20 is that right?

21 A Yes. There was no additional authority
22 needed. I received that authority. All I did

23 was state what the acceptance was.

24 Q Had you received the authority to

2 A I had an absolute right to whatever I
3 thought was in our best interest I did.

4 Q Did anybody here up at the Herald Tribune
5 countermand that agreement or authority?

6 A Absolutely not.

7 Q After the May 23rd, 1963 meeting, did the
8 Herald Tribune carry out its part of the bargain?

9 A Yes. I know we made a very concerted
10 effort to put up more cards than ever. There is an
11 absolute better feeling when you know you do not have
12 to ask. You just do it. You have the right to.

13 Q Referring back to your May 23rd, 1963
14 meeting with Mr. Garfinkel, did he ask you whether
15 the Herald Tribune had any display allowance agree-
16 ment or comparable agreement with any other news-
17 paper retail outlet?

18 A No. To the best of my knowledge at
19 this point I do not think that was discussed.

20 Q Did the Herald Tribune have any such
21 agreement with any other newsstand outlet?

22 A No.

23 Q Did you assure him at that meeting that

there were agreements with other newsstand outlets

or display outlets?

25

2 A Did I assure him that I did have an
3 allowance?

4 Q Yes.

5 A I never had an allowance with others.

6 Q This never came up?

7 A No.

8 Q After the agreement went into effect did
9 Union News send a bill to the Herald Tribune on a
10 monthly basis for these services?

11 A Yes, I remember approving them.

12 Q Those bills came to your attention?

13 A Yes, they were countersigned.

14 Q By whom?

15 A By me. They were signed by me for
16 payment to the comptroller.

17 Q Were they countersigned by the comptroller
18 as well?

19 A The procedure of the Herald Tribune was
20 that all bills would be countersigned by the comp-
21 troller. I would assume that is no different than
22 anything else.

23 Q To the best of your recollection the
24 Herald Tribune did pay the amount to Union News for
25 the placement or display?

2 A We absolutely did.

3 Q How were the bills described? When you
4 got a bill from the Union News did it say the
5 payment was for such and such?

6 A I cannot truthfully answer that at this
7 time. It is too long ago.

8 Q During this period when you were at the
9 Herald Tribune from 1963 forward until your departure
10 did the Herald Tribune bill Union News for the sale
11 of newspapers?

12 A Of course, yes.

13 Q Were the payments for placard allowances
14 treated as a setoff against the bill to Union News
15 or were they separately paid?

16 A No. That was a separate bill.

17 Q At any time after 1963 did anyone from
18 Union News, Henry Garfinkel or Bill McCollough or
19 any other officer, approach you and ask you whether
20 the Herald Tribune was making a comparable agreement
21 with any other retail newsstand or display allowance?

22 A No.

23 Q Did you in fact make any comparable agree-

24 A We did not.

2 Q During the second period while you were
3 at the Herald Tribune from 1963 forward, did you
4 have occasion to meet with the other circulation
5 directors of the New York newspapers to discuss
6 common business problems?

7 A We met. We did meet. We met on many
8 occasions, socially as well as for business purposes.

9 Q At your business meetings did you ever
10 discuss the deals that you had with Union News with
11 respect to either the price of the newspaper or the
12 placard display allowance?

13 A I would assume.

14 Q I just want you to recall whatever you can
15 recall.

16 A Ten years ago I cannot say at this time
17 that I discussed that at a meeting. Since I cannot
18 assume --

19 MR. ROTH: You are telling the truth and
20 that is enough. Do not worry about what he wants you
21 to say. You are not here to hear what he wants.

22 THE WITNESS: I am only concerned to tell
you the truth to the best of my ability.

MR. ROSENBERG: Off the record.

Off the record off the record.

2 Q From the time of the agreement in May of
3 1963 until you left the Herald Tribune did either
4 the Herald Tribune or the Union News attempt to
5 modify the agreement? I am speaking of the
6 placard agreement.

7 A Not while I was there; no, we did not.

8 Q When did you leave the Herald Tribune
9 the second time?

10 A To the best of my knowledge it was July
11 1, 1964 or June 30th.

12 Q Who succeeded you as circulation director?

13 A Albert von Entress was then my assistant.
14 He was my assistant.

15 Q What position did you take upon leaving
16 the Herald Tribune?

17 A I took the position as circulation director
18 of the Boston Herald Traveler Corporation.

19 Q Who invited you to come to that paper?

20 A Mr. Garfinkel.

21 Q Mr. Henry Garfinkel of Union News?

22 A Yes.

23 Q What was his connection with the Boston
24 Herald Traveler, so far as you know?

2 Mr. Garfinkel suggested that I contact
3 the publisher of the Boston ^{Herald} ~~Herald~~ since he had
4 recommended me for the position of circulation
5 director of those papers, Boston Herald and Boston
6 Traveler. I just wanted to qualify that.

7 Q How long did you remain at the Boston
8 Herald Traveler?

9 A Four years.

10 Q Did you leave the paper in 1968 voluntar-
11 ily?

12 A No, they gave me about a year's notice.

13 Q They is to mean the publishers?

14 A Yes.

15 Q Thereupon you purchased the Altoona News
16 Agency, is that correct?

17 A That is correct.

18 Q Are you now receiving any compensation
19 whatsoever from either the Boston Herald Traveler
20 or the New York Herald Tribune?

21 A I am not.

22 Q Do you hold any stock in Whitney Commu-
cations Corporation?

23 A I do not.

24 Q Do you own stock in any other company?

2 the Boston Herald Traveler, if it is still in
3 existence?

4 A I do own stock in the Boston Herald
5 Traveler Corporation, known as WHDH.

6 Q Do you hold any stock in Ancorp National
7 Services, Inc.?

8 A I do not.

9 Q Have you ever held stock in that company?

10 A I have not.

11 MR. ROSENBERG: I have no further questions.

12 MR. ROTH: Mr. Rosenberg, I think you
13 mentioned a letter that was received by the Herald
14 Tribune by Mr. Newborn, didn't you? It was in 1963
15 in connection with these conversations.

16 MR. ROSENBERG: I asked Mr. Newborn whether
17 he received a letter in January of 1960 from Union
18 News concerning Union News request that the retail
19 price of newspapers be raised.

20 MR. ROTH: Retail price of newspapers be
21 raised?

22 MR. ROSENBERG: That is right.

23 MR. ROTH: May I see the letter?

24

UNIT

2 the business manager of the New York Daily News.

3 I asked Mr. Newborn if he could recall receiving a
4 comparable letter when he was at the New York Post.

5 EXAMINATION

6 BY MR. ROTH:

7 Q Do you recall now that in 1960 you
8 received a letter from Mr. Garfinkel saying that they
9 suggested the price of the newspapers be raised?

10 A No.

11 Q What did you answer to?

12 A As I recollect this, the answer was a
13 letter addressed from Morris Strassman, not Henry
14 Garfinkel, stating that they were going to raise the
15 price of the paper on their newsstands.

16 Q Did they raise the price?

17 A They did not.

18 Q Do you recall what that was about?

19 A It was an increase somewhere in costs.
20 They stated it was their intent of raising the price
21 of papers.

22 Q Wasn't it because they were having

23 additional costs in relation to the labor negoti-

24

2 Q That was a letter addressed from whom to
3 whom?

4 A I could not tell you now.

5 Q You remember now such a letter?

6 A Yes, because the letter at that time
7 became a discussion somewhere, somehow. I remember
8 we were all thinking how people could get the break-
9 down change and be lined up like at Grand Central
10 where people came in for papers.

11 Q When you had an odd figure?

12 A That is right. People getting change.
13 I do recall where we just could not understand how
14 they could give change fast enough. It would hurt
15 the sale of papers. It was an odd situation.

16 Q Your answer apparently ^{fits} applies in the
17 face of generations of prior practices, doesn't it?

18 A Yes.

19 Q Now, the fact of the matter is that that
20 was all a suggestion in connection with the rising
21 costs as far as the retail distribution is concerned,
22 is that correct?

23 A That is correct.

24 Q Mr. Newborn, the fact of the matter is,
25 that when you discussed this possible distribution

1 nss

2 allowance so-called with a Mr. Garfinkel in May
3 of 1963, according to your testimony, Mr. Garfinkel
4 was looking for additional income, isn't that what
5 he said? Didn't he say that because of additional
6 costs?

7 A He was looking definitely for additional
8 income, yes.

9 Q Didn't he tell you that the costs were
10 rising?

11 A No question about it, yes. He did.

12 Q He didn't care how he got it, whether it
13 was advertising or any other way, price rebate or
14 advertising or any other way, isn't that right?

15 A I do not think he was that broad in
16 his feeling and in his expression. I think that
17 he expressed the desire to receive this money.
18 It was a means of getting it.

19 Q Just one means of getting it?

20 A That is correct.

21 Q Did you know at the time that for many
22 years before 1963 the New York Times was paying a

23 figure, a large figure, such as \$25,000 in price

24 allowances to the Union News?

25 A PRICE ALLOWANCES, I DO NOT KNOW. I DO

2 not know what it was termed as.

3 Q Do you know whether the Herald Tribune
4 was making any separate price allowance?

5 A No, we were not.

6 Q How did you know?

7 A Because as a director of the department
8 I would know if special allowances were given.

9 Q Nobody told you that the Times was doing
10 that?

11 A I do not remember anybody telling me
12 about a price allowance that the Times was giving.
13 I do know that the Times was given \$25,000.

14 Q You do not know what it was for?

15 A Can we pin down a time?

16 Q That was for a period of years before
17 1963.

18 A The period of years, I do not know.

19 Q What years are you talking about was
20 the \$25,000?

21 A I know in 1963 specifically at that time
22 the Times was paying it. I could not tell you when

23 the Times payment started.

24 Q But you knew it was for some time past.

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Q It might have been years past?

A It might have been a couple of days, I do not know.

Q Who told you?

A I cannot be that specific 10 years later.

Q You were specific about other things. Try to be specific about this.

A I cannot honestly say Henry told me at this time. He might have. I cannot honestly say this specifically at this time.

Q Did Thayer tell you or MacDonald if that is his name?

A I could not honestly say that they said this. They did note the Times was making the payment. I do know this:

That when I arrived at the \$15,000 or \$12,000 figure with Henry that there was a basis that the Herald Tribune would give less because of its position to the Times which in New York City the Times had a greater circulation.

Q Mr. Newborn, you testified fully to your recollection. Let me ask you truthfully:

Is it a fact that to call

liking all these and nothing

2 or the means of giving them the money?

3 A Absolutely.

4 Q You never would have paid \$15,000 or
5 anything like it merely for the privilege of putting
6 up these signs wherever you felt like it in addition
7 to the signs you were able to put up?

8 A Yes.

9 Q So that for all practical purposes this
10 was simply a way of giving money to reduce the total
11 cost of their purchases made from the Herald Tribune,
12 is that correct? It was in substance, in fact, in
13 reality a price allowance and a plan under which
14 you disguised the price allowance?

15 A I did not disguise it.

16 MR. ROSENBERG: Just a second.

17 Mr. Roth, I am going to permit this whole
18 line of questioning to go on. You are asking the
19 witness to draw legal conclusions.

20 MR. ROTH: That is your objection to form.

21 MR. ROSENBERG: It is not an objection to

22 form. It is an objection to substance.

23 MR. ROTH: I know it as well as you do.

25 witness that I cannot say nor do I understand that

2 to reduce the rate of your paper was it not.

3 Q You were finding a way of getting money
4 to the Union News and you said yes. That was it.
5 We will forget that for the moment.

6 Let's take a look at your diary that you
7 produced.

8 A Sure.

9 MR. ROSENBERG: Will you mark that as
10 an exhibit?

11 Q The meeting with Mr. Thayer. There's
12 nothing in these entries that state what you have
13 talked about?

14 A No, there is not.

15 Q How did you happen to come to testify
16 here today?

17 A Mr. Rosenberg got in touch with me and
18 asked me to come.

19 Q How?

20 A He sent me a letter and called me.

21 Q Where is the letter?

22 A Do you have a copy of the letter? I have
23 this (indicating).

24 Q Was there a letter first?

25 MR. ROSENBERG: I am going to object to

2 the production of any letter to Mr. Newborn as being
3 lawyers work product. I think that the deposition
4 notice is sufficient to explain why he is here.

5 MR. ROTH: That is not lawyers work
6 product after it is delivered to somebody who is not
7 a lawyer. He is an outside party.

8 A I did have a letter.

9 Q What did it say?

10 A It told me that it was a case and he had
11 been referred to me by Albert von Entress. He said
12 that Albert von Entress had told him that I was at
13 the Herald Tribune during the period concerning the
14 Ancorp allowance suit and that this was seeing
15 the Government's position of possibly -- in the
16 amount of money stated -- I guess what the damages
17 or whatever you call it were for.

18 Q How long was that letter?

19 A A page and a half and to contact him as
20 soon as possible.

21 Q What did it say about the Herald Tribune
22 or about the Post?

23 A Not the New York Post. It mentioned

24 the Herald Tribune. It mentioned the fact that

25 the deposition director at the time had

1 nss

2 Tribune.

3 Q Did it say anything about what testimony
4 he expected from you about what you might testify to?

5 A No. It stated the Government's
6 position that they were filing this -- whatever it
7 was.

8 Q What did it say about the advertising
9 allowance?

10 A It did not mention anything about it.
11 It did mention about that the case had something to
12 do -- I cannot say word for word, concerning display
13 retail allowance and the position of the paper.

14 Q Have you got the letter?

15 A Yes.

16 Q Will you send me a copy of it?

17 A Sure.

18 Q Then what happened?

19 A Then he asked me to come and testify.

20 Q Did you talk to him on the phone?

21 A I did call Mr. Rosenberg as he asked me
22 in his letter.

23 Q Then you had a talk with him on the phone?

24 A I did speak with him on the phone.

25 Q Did he ask you any questions about it?

2 case?

3 A He did ask me if I was at the Herald
4 Tribune and whether I had any arrangements -- made
5 any arrangements. I said yes.

6 Q You told him about this meeting?

7 A I told him about the meeting. I told him
8 I was at the Herald Tribune with Mr. von Entress since
9 Mr. von Entress had evidently spoken to him. And that
10 in the period in question I was the circulation
11 director. I said this was so. He asked me
12 whether I would come to testify and I said I would.
13 I guess that is about it.

14 Q We won't pursue that much further.

15 You testified that you were with the Post
16 from 1956 to 1961. When you were asked about
17 whether any price allowances were made from 1937 to
18 1960 different publications, my recollection is that
19 you said absolutely not. Were price allowances
20 made when you were with the Post from 1956 to 1961?

21 A No.

22 Q Are you sure of that?

23 A To the best of my knowledge, I do not know
24 of any price differential.

25 Q You were circulation director and as

2 circulation director of the Herald Tribune you would
3 know all those things?

4 A I would and I would say that the New
5 York Post we billed Union News at the same rate we
6 billed everyone else.

7 Q Perhaps there were certain payments made
8 on separate bills. Would you know about that?

9 A Payments we make?

10 Q Yes.

11 A We did not make payments to me on separate
12 bills because it would be out of my budget.

13 Q You would not know about it?

14 A I would know about it in my budget.

15 Q Who succeeded you?

16 A Byron Greenberg.

17 Q I will read to you some testimony taken by
18 Byron Greenberg of the Federal Trade Commission on
19 September 23, 1969 starting at the bottom of page 21

20 "Q Did the New York Post ever pay
21 any rebates to any of its dealers?

22 "A Yes.

23 "Q Can you tell me the names of the

24

25 "A He paid an advertising allowance to

2 the Union News Company.

3 "Q Advertising allowance?

4 "A That's correct, and a rebate for
5 certain newsstand location areas.

6 "Q For whose newsstands?

7 "A Union News Company.

8 "Q Let's take the rebates first.

9 Can you tell me when the rebate payments
10 began?

11 "A I do not know when they began, nor
12 have I been able to determine when they began.
13 The information that is available to us is that
14 they had been in existence or they had been
15 in existence since 1943. Whether they
16 preceded that or not, we are unable to deter-
17 mine.

18 "Q Would you explain to me the amount
19 of the rebate that was paid to the Union News
20 Company? You can explain it in narrative
21 form, if it is easier for you.

22 "A At the time the rebates were dis-

continued --

23 "Q What was that date, by the way,
24 Mr. Greenberg?
25

2 "1 The latter part of July 1969."

3 THE WITNESS: I do not know of a rebate.

4 Q You never knew they rebate even though
5 you were circulation director?

6 A Peter knew. Does it say what the rebate
7 was?

8 MR. ROSENBERG: Do not ask questions.

9 Q It says on the top of page 22:

10 "Q An advertising allowance?

11 "A That's correct, and a rebate for
12 certain newsstand location areas."

13 At the bottom of page 23 --

14 MR. ROSENBERG: Is there a question?

15 MR. ROTH: Yes, there was a question.

16 He said he did not know anything about a rebate.

17 Is that your answer?

18 A Yes.

19 Q On the bottom of page 23 Mr. Greenberg's
20 testimony reads as follows:

21 "Q Tell me a little bit about the
22 rebates, what they were for, how they worked,
23 how much they were.

24 At the time the rebates were dis-
25 continued they referred only to the country

2 and suburban areas, and they consisted of
3 one dollar per hundred copies rebate in the
4 country areas and I believe 25 cents per 100
5 copies in the suburban area. The total
6 amount of money involved for rebates was, I
7 would estimate, approximately \$40 a week."

8 Do you recall those rebates?

9 A In the country and suburban areas, yes.
10 I do not recall them in the city area.

11 Q Do you recall \$40 a week and 25 cents?

12 A In the country, yes. I brought it up
13 to you specifically. I mentioned city and was
14 very emphatic, city.

15 Q The city includes 50 miles away.

16 A The suburbs were given 25 cents. The
17 reason I did not know. Let me tell you this:

18 That billing was done on an indirect
19 basis and not out of the Herald Tribune and to the
20 New York Post. The wholesaler was billed at a
10 21 specific equal rate and he in turn billed Union News
22 at the regular rate. The rebate of the 50 cents
23 in the suburban areas, I did not initiate. I do
24 recall the country and suburban rate. I have no
25 idea what it was for. The city zone --go ahead,

2 I am sorry.

3 MR. ROSENBERG: Why don't you complete
4 your answer?

5 A The city zone was where the New York Post
6 sold the greatest majority of its newspapers.
7 Also the fact that our billing was constant, assist
8 in price, is why I did not know.

9 Q The suburban zone included all the counties
10 around the City of New York along with the five counties,
11 itself?

12 A Yes.

13 Q You did not make deliveries there directly?

14 A Indirectly.

15 Q The city zone included the entire 50-mile
16 radius?

17 A That is correct.

18 Q Nobody else got that allowance?

19 A That is correct. The \$40 includes the
20 country.

21 Q That is what he estimated here.

22 A It is a very insignificant amount of

23 circulation. Now I do recall the suburban area,

24 right. It is about 1200 sales a day.

25 Q Let me read you further on page 25:

1 "Q When you became aware of the
2 rebate deal between the New York Post and the
3 Union News Company, what was your understanding
4 as to the reason for the payment of the rebate?
5

6 "A No.

7 "Q Did you ever question why the rebate
8 was being paid?

9 "A I believe I attempted to ascertain
10 the basis for it.

11 "Q Did you ever ascertain it?

12 "A But I was unable to do so, particu-
13 larly since there had been the usual changes
14 of personnel. If there had been parties who
15 were parties to the original arrangement, they
16 were no longer available to shed any light on the
17 situation.

18 "Q In your present position, would you
19 have the authority to terminate these payments?"

20 There was some off the record discussion.

21 I will stop there.

22 On the bottom of page 26 -- I will ask
23 you a question about this when I am through reading
24 it.

25 "Q What were these rebates paid for?

2 "A I believe I answered previously
3 that I was not aware of the background of its
4 origin.

5 "Q When you reviewed the deal, so to
6 speak, in your position with the Post, what
7 factors did you take into consideration to
8 determine whether it was a good deal, whether
9 the rebates should continue, whether they
10 should terminate? What factors did you
11 personally consider?

12 "A Well, I considered the fact that I
13 had not been able to determine the basis for
14 the original arrangement. I had to assume
15 that it had some basis in fact or some merit.
16 But I considered further that there were some
17 distinct advantages present in the Union News
18 arrangement. For example, the central
19 billing aspect of it, which reduced the extent
20 of our accounting procedures and in that sense
21 represented a savings to us.

22 "Q Was that the only advantage you saw?

23 "A I think that there is a very large
24 benefit. I am limiting my reply to the rebates
25 as they applied to the country and suburban

2 area. It is possible to extend that to the
3 over-all Union News Company arrangement, in
4 which case the advantages of the slip system
5 and the central billing system become extremely
6 important. Among other things, it limits
7 or minimizes the exposure of our routemen in
8 handling of money. Additionally, it does not
9 require that our circulation cashiers have to
10 process that money because the money trans-
11 action is eliminated. Also, it facilitates
12 the other functions that our distributors do,
13 and I mean both our own employees and our whole-
14 sale agents, by not having to stop the dis-
15 tribution process in order to specifically make
16 money collections.

17 "Then again, we are paid in one lump sum
18 for a total week's copies. Each of these
19 separately and all of these collectively are,
20 in my view at least, a distinct advantage."

21 Q Do you agree with Mr. Greenberg's state-
22 ment?

23 A I do not.

24 Q He made this statement in 1969 before any
25 litigation was commenced.

1 You talked about the fact that as early
2 as 1956 there were three chain retailers:

3 Garfield, Union and Eastern. How many
4 stands did Eastern have in 1956?

5 St. George Hotel was one downtown.
6 He had one in 42nd Street under the subway of 42nd
7 Street.

8 In the subway?

9 Not in the subway, just before you went
10 into the subway, he had a stand.

11 I am talking about Eastern.

12 The one stand there, the Union News had
13 one about 10 feet away. Bernie Green who was head
14 of it, got this one stand downstairs.

15 How long did he have this stand?

16 I do not know.

17 He had that in 1956? You are sure of
18 that?

19 Yes.

20 Will you wait a minute, Mr. Newborn.

21 I know you are a man of honor, but do not be carried
22 away by this. You should think carefully about my

23 question just as you thought carefully about Mr.

24 Rosenberg's questions. When I ask you about a date

2 you should make your mind up about a date before you
3 say yes.

4 A You are absolutely right, sir.

5 In 1956 I cannot say specifically.

6 Q Did he have it in 1963 in the subway?

7 A There was a stand operated by Eastern
8 News in those later years, yes.

9 Q You know of your own knowledge that at the
10 subway entrance --

11 A Not at the subway entrance. This is down
12 below, not up above. It is down a flight of stairs
13 that they had a stand. This was in an arcade, not
14 on subway property. It was leading into the subway
15 facility.

16 Q You knew it was there in 1963?

17 A Yes.

18 Q How long was it there to your knowledge?

19 A I do not know. I left New York.

20 Q How many other stands did Eastern have?

21 A Eastern got into a few hotels, but I do
22 not remember them because they were not significant.

23 The St. George was very significant. The one in
24 the Times Square area was significant.

25 Q How many hours a day were the stands of

2 the Eastern News Company opened in the Grand Central
3 News Terminal?

4 A There was one stand opened all night long.

5 Q When did Garfield News become affiliated
6 with Union News, to your knowledge?

7 A I do not know. It was after I had
8 left New York.

9 Q Where were the Garfield News stands?

10 A The most important one was at the bus
11 terminal on 40th Street or 41st Street. I know
12 their main office at one time was on Lexington
13 Avenue and about 30th Street.

14 Q Who controlled the Garfield title to
15 your knowledge?

16 A I dealt with a couple of very lovely ^{fine} find
17 gentlemen. One of the men's name was Bernie.

18 Q Did Mr. Garfield have anything to do with
19 Garfield News?

20 A He did own a stock at one time.

11 21 Q I think that I heard you testify that the
22 price of retail level for the total concern of the
23 retail --

24 MR. ROSENBERG: I do not recall that
25 testimony.

2 Q I made a note of it.

3 A I might have used the word concern.

4 I would like to say to you that the price was always
5 our concern, but I think, we felt very strongly
6 that we could not interfere with the retailers'
7 price schedule.

8 MR. ROSENBERG: We meaning you at the
9 New York Post or Herald Tribune or both? Who is
10 the we?

11 A I mean --

12 MR. ROTH: The Herald Tribune at the time
13 you talked about it.

14 THE WITNESS: The retail price is always
15 a concern of myself, the publisher, the editor.

16 Q The language you used and I wrote it
17 down very carefully, prices at retail level were the
18 total concern of the retailer.

19 A I used the wrong word. Concern is not
20 correct.

21 Q Then this statement of total concern is
22 not correct?

23 A Total right. 410 13

24 Q Legal right.

25 Do you know of anyone that raised the

2 retail price successfully?

3 A Yes.

4 Q Who?

5 A Hotel stands in Atlantic City.

6 Q In the city?

7 A Hotels. The one that stands out in my
8 mind is at 59th Street and Sixth Avenue.

9 Q As a regular thing selling to the public
10 they sold at a price higher than the cover price?

11 A They added a nickel.

12 Q Where is it located?

13 A In the hotel.

14 Q What hotel?

15 A It is at 59th Street and Sixth Avenue.

16 Q What hotel?

17 A It is on the southeast corner.

18 Q Yes, I know the hotel.

19 A It is now owned by a Greek group.

20 Q Down in the train area?

21 A No, I do not.

22 Q What would have happened if anybody had
23 decided to raise the price of the paper to 10 cents
24 above at a newsstand dealing with the public rather
25 than in an isolated hotel?

2 A I would say he would have a lot of
3 people getting mad at him, but I could not do a
4 damn thing to him.

5 Q You would keep on supplying to him the
6 same as before?

7 A I think I would be wrong if I did not.
8 I would be legally wrong.

9 Q He would find it a little more difficult
10 to get his papers?

11 A No.

12 Q Let's be honest.

13 A I would be very honest. This happens to
14 be a very sensitive area and has always been a very
15 sensitive subject. The question of this particular
16 situation is one that you must be quite proper about
17 otherwise you do get into bad trouble.

18 Q Because under the Fair Trade laws there is
19 a minimum price and not maximum so you were not
20 protected by the so-called Feld-Crawford Act and so
21 forth.

22 MR. ROSENBERG: That is an observation
23 and not a question, I take it?

24 A You made a point and I will have to restate
25 my position and that is --

2 Q Restate your testimony? We will drop
3 the subject.

4 The total number of stands that Eastern
5 had was how many?

6 A I think they ended up in five or six
7 prime locations, but --

8 Q They did not have any railroad or airport
9 or bus terminal stands, did they?

10 A No, they did not.

11 Q Let us clarify the situation out of town.
12 Let us take a place like Washington.

13 How was the Post ^{or} of Herald Tribune
14 distributed in Washington?

15 A Through the Ottensdenn organization.

16 Q How did the Union News stands in the
17 terminals secure their papers?

18 A Through distributors in Washington.
19 We sent them down.

20 Q Through Ottensdenn and no other way?

21 A I know the Herald Tribune was their
22 Ottensdenn.

23 Q What was the cover price of the Herald
24 Tribune in Washington during your tenure? What was
25 the price marked on the top?

2 A When we started flying them there it
3 went up. I do not know exactly. The price in
4 Washington was stated on the paper. We had a
5 different price in country areas. It might have
6 been a nickel or ten cents higher.

7 Q It was always stated on top even if it
8 was a higher price?

9 A That is correct.

10 Q These prices were presumably for all over
11 the country?

12 A In the country area, yes.

13 Q Do you know at what prices the local
14 retailers in Washington sold, perhaps other cities
15 sold the Herald Tribune or the Post as compared to
16 the cover price?

17 A When you said dealer, the main dealer
18 in Washington, D.C. at the airport?

19 Q I am talking about retailers all over.

20 A All over Washington?

21 Q Yes.

22 A Do I know? I know that some retailers
23 were selling it at regular prices.

24 Q You know that a number of retailers sold
25 them at higher prices than at the cover price?

2 A I said that before.

3 Q I am talking above regular price and a
4 number sold them above?

5 A We had people tell us about increased
6 prices.

7 Q You were uninterested in maintaining the
8 cover price of the paper, were you not?

9 A Of course we were interested.

10 Q Regardless of the legality, as a matter
11 of interest?

12 A Of course.

13 Q It was to your interest that the news-
14 papers be sold at a cover price so that might be
15 competitive with local papers, is that right?

16 A Only competitive, not at the local level.
17 We were competitive with the New York Times.

18 Q Suppose it was a question of whether
19 you decided to read the Washington Post or the New
20 York Times and the New York Times was selling at
21 twice the Washington Post. You might not buy the
22 New York Times?

23 A No.

24 Q You do not think for a moment that the
25 interest of the New York newspaper was not based upon

2 competition from good local newspapers which would
3 sell naturally at lower figures?

4 A I can tell you because of good experience
5 and answer you properly because I sell the New York
6 Times today and put it at your doorstep for \$1 in
7 Altoona. The Washington Post can sell for 50 cents
8 and people will still buy the New York Times if they
9 want to read it.

10 Q I am talking about the Washington Post for
11 fifty cents.

12 A If you are a New York-type reader you
13 are going to get the New York Times.

14 Q Then you would not be interested at all if
15 the New York Times raised the price or both of them?

16 A You did not say the Washington Post.
17 When you mentioned the Herald Tribune and the New
18 York Times that was and is my interest. The
19 Washington Post was not.

20 Q The publisher of the New York papers were
21 not interested in the competition of the local
22 papers?

23 A No, that was not my statement.

24 Q What is your statement?

25 A My statement is that when you are a New

2 Yorker, a likely reader --

3 Q We are talking about the average person.

4 We are talking about generalities. I am not talking
5 about a special guy. I am talking about generalities.

6 Answer this question if you can:

7 Do you say that as a publisher of a New
8 York newspaper selling in Washington or in a similar
9 city is not interested in the price of his paper by
10 reason of the competition of a good local paper and
11 its price?

12 MR. ROSENBERG: Objection.

13 A I cannot answer that. I am not a pub-
14 lisher.

15 Q You are a circulation manager not inter-
16 ested in circulation?

17 A I am interested in circulation.

12 18 Q Obviously you're interested in seeing
19 certain things that are not to your interest. I am
20 afraid that I must view your testimony with a
21 jaundice eye.

22 MR. ROSENBERG: There is no question on
23 the floor.

24 Q We will pass that one up because it was
25 too obvious.

How many stands did Union News Company have during your second tenure with the Herald Tribune?

A A minimum of 100. A minimum amount of 100 all over.

Q No better than that?

A It might be.

Q Would it be less than 200?

A Possibly.

Q Would it be 500?

A No.

Q Are you talking about the metropolitan area or all over?

A Where the Herald Tribune was on sale.

Q You think it was only about 100 stands?

A I said minimum of 100. The reason I use the term is because it was not less.

Q What terminals did they have?

A Grand Central, Penn Station --

Q Any bus terminals?

A Garfield. You're not putting Garfield in the same category?

Q They eventually came in.

A Garfield, there was a stand on the east

2 side terminal, east end terminal, LaGuardia,
3 Kennedy, Newark.

4 Q Do they have all the stands at Kennedy?

5 MR. ROSENBERG: Did they have?

6 Q Did they have at your time?

7 A I cannot recollect.

8 Q Tell us your recollection. That is all.

9 A I think they did. Kennedy has changed
10 so that I cannot really say.

11 MR. ROTH: I have no further questions.

12 MR. ROSENBERG: Mr. Roth, will you stipulate
13 that Altoona, Pennsylvania where Mr. Newborn lives and
14 works is more than 100 miles from New York City?

15 MR. ROTH: I do not know.

16 EXAMINATION

17 BY MR. ROSENBERG:

18 Q Is Altoona, Pennsylvania more than 100 miles
19 from New York City?

20 A Absolutely.

21 Q How far is it?

22 A From my house in Altoona to here is almost
23 on the head of 300 miles.

24 MR. ROSENBERG: Mr. Roth, will you stipulate
25 that Mr. Newborn's diary entry reflects the luncheon

OMIT

2 meeting with Mr. Thayer on May 20th and Mr. Garfinkel
3 on May 23rd, 1963?

4 MR. ROTH: They do not reflect it at all.
5 They merely maintain a notation containing the words.
6 They do not reflect the meeting. They assume it
7 as if it were reflected the meeting that he testified
8 to.

9 Why don't you read the language and I will
10 stipulate?

11 Q I show you three pieces of paper which are
12 Xeroxed copies and I ask if you can identify them.

13 A Yes.

14 Q What are they?

15 A They are pages from my diary.

16 Q From what year?

17 A 1963.

18 MR. ROSENBERG: I ask that they be marked
19 as Government's Exhibit 1 for identification.

20 (Government's Exhibit No. 1 was marked
21 for identification.)

22 Q Mr. Newborn, are the entries that are
23 shown on Government's Exhibit 1 for identification
24 entries that you made more or less contemporaneously
25 with the dates therein?

2 A Yes, they are.

3 MR. ROSENBERG: Off the record.

4 (Discussion off the record.)

5 Q When I send you, Mr. Newborn, a tran-
6 script of your testimony today, will you send us
7 along with your answer copies of newspaper articles
8 in your custody which will reflect the dates on which
9 you left the New York Post and joined the Herald
10 Tribune?

11 A Yes.

12 Q Did I offer you or did anyone on behalf
13 of the Government offer you a sum of money to come to
14 testify here today in this pretrial examination?

15 A In your letter to me you said that the
16 per diem or whatever it was called, per mileage
17 amount of money would be given to me for my expenses
18 to come up here, traveling expenses. I think it
19 was 10 cents a mile or something like that.

20 Q 10 cents a mile transportation and \$20
21 witness fee.

22 A That is right.

23 Q Did I offer you or anybody else in the
24 United States Government offer you any sum of money
25 or anything of value in addition to the statutory

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2 witness fee?

3 A No.

4 Q When you were at the New York Post you
5 were in charge of the New York City circulation?

6 A No, sir. I was in charge of all cir-
7 culation.

8 Q When on cross-examination Mr. Roth asked
9 you about the alleged rebates paid by the New York
10 Post to the Union News Company dating back to 1963
11 referring to country and suburban areas, did that
12 refresh your recollection?

13 A Yes.

14 Q What is your present recollection concern-
15 ing price allowances or rebates paid by the New York
16 Post to the Union News?

17 A Now that it has been refreshed?

18 Q Now.

19 A We had a consistent price charge-out,
20 the rebate in the suburban area and country area
21 was given to them. For what reason it was given
22 to them, I do not know because I was not there when
23 it started. I did inquire once. I do not
24 remember the answer. I know it was an insignifi-
25 cant amount of money and it was not too material.

2 Q Did you ever talk to Byron Greenberg
3 either while you were at the New York Post or after
4 you left it concerning the Post's payments to Union
5 News of price allowances or display allowances?

6 A No.

7 MR. ROSENBERG: I have no further ques-
8 tions.

9 MR. ROTH: I have no further questions.

10 (Time noted: 4.45 p.m.)

11

12

13

14 Subscribed and sworn to before me

15 this 15 day of June 1973.

16

17

18

NOTARY J. KIRKWOOD, Notary Public
Allentown, Blair Co., Pa.
His Commission Expires May 23, 1977

19

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2 CERTIFICATE

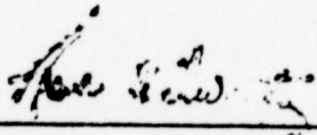
3 STATE OF NEW YORK)
4) ss.
5 COUNTY OF NEW YORK)

6 I, Nan Schwartz, a Shorthand Reporter
7 and Notary Public within and for the State of New
8 York, do hereby certify:

9 That ROY I. NEWBORN, the witness whose
10 deposition is hereinbefore set forth, was duly
11 sworn by me and that such deposition is a true
12 record of the testimony given by such witness.

13 I further certify that I am not related
14 to any of the parties to this action by blood or
15 marriage; and that I am in no way interested in
16 the outcome of this matter.

17 IN WITNESS WHEREOF, I have hereunto set
18 my hand this 14 day of June 1973.

19 

20 NAN SCHWARTZ

21 ---

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X
4 UNITED STATES OF AMERICA, :
5 Plaintiff, :
6 v. : 70 Civ. 5770 DDB
7 ANCORP NATIONAL SERVICES, INC., :
8 Defendant. :
9 -----X

10
11 DEPOSITION OF HERBERT FRIELEN

12 a witness, taken by plaintiff pursuant to
13 notice dated 26 June 1972, at the offices
14 of the United States Attorney, room 328,
15 United States Court House, Foley Square,
16 New York, N.Y., on 12 September, 1972,
17 commencing at 2:00 o'clock p.m., before
18 C. A. Michaelini, a certified shorthand
19 reporter and notary public of the State
20 of New York.

21 APPEARANCES:

22 WHITNEY NORTH SEYMOUR, JR., ESQ., United States
23 Attorney for the Southern District
of New York, Attorney for the
plaintiff;

By Gerald A. Rosenberg, Esq., Assistant United
States Attorney.

21 EUGENE ROTH, ESQ.,

Attorney for defendant,
230 Park Avenue, New York, 10017

STIPULATIONS

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IT IS HEREBY STIPULATED AND AGREED by and between counsel for the respective parties hereto that the sealing and filing of the within deposition be waived, that such deposition may be signed and sworn to before any officer authorized to administer an oath, and that all objections, except as to form, are reserved to the time of trial.

--

HERBERT FRIELEN, called as a witness in behalf of the plaintiff, stating his address as St. Simons Island, Georgia, having been first duly sworn by the notary public (C.A. Michaelini), testified as follows:

EXAMINATION

BY MR. ROSENBERG:

Q Mr. Frielen, were you served with a subpoena in this matter?

A No, sir.

Q Are you appearing here today pursuant to a notice?

MR. ROSENBERG: There are different kinds of

notices, Mr. Rosenberg. Mr. Frielen is appearing here

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2 wanted to take his deposition.

3 MR. ROSENBERG: That is correct, Mr. Roth.

4 I want to establish that Mr. Frielen is not appearing
5 here today in response to a subpoena, but rather in
6 response to a notice which was served upon the
7 defendant.

8 MR. ROTH: Of course.

9 MR. ROSENBERG: For whom you are counsel.

10 MR. ROTH: Of course.

11 MR. ROSENBERG: Mr. Roth, will you
12 stipulate that Mr. Frielen is appearing here today in
13 response to a notice dated June 26, 1972, which I hand
14 to you at this time (handing)?

15 MR. ROTH: Yes.

16 MR. ROSENBERG: With your indulgence, I
17 would like to read the body of the notice into the
18 record.

19 MR. ROTH: That is all right.

20 BY MR. ROSENBERG:

21 Q The notice pursuant to which you are here

22 today reads:

23 "Sir, Please take notice that the plaintiff, the

24

2 by any agent of the defendant corporation who
3 can testify on personal knowledge, information
4 or belief with respect to contracts or agreements,
5 whether written or oral, entered into by and
6 between the defendant and publishers of newspapers
7 between 1959 and 1969 under the terms of which
8 the publishers agreed to pay to defendant a
9 rebate, price allowance or other compensation
10 in connection with defendant's promotion or
11 sale of newspapers on its newsstands, before a
12 notary public, or some other officer or person
13 authorized to administer oaths."

14 I acknowledge that I am omitting the formal
15 remainder of the notice.

16 MR. ROTH: May I comment to this effect:
17 While Mr. Frielen is appearing pursuant to that notice
18 served on me, he is also appearing pursuant to an oral
19 request by Mr. Rosenberg that his deposition be taken.

20 Technically he is not an agent or employee
21 of the defendant, although he has some forms of

22 compensation, or, deferred compensation, being paid to
23 him.

24 I assume you are not raising any questions.

2 will tell you the facts as well as he knows them.

3 MR. ROSENBERG: I am sure he will. And I
4 accept your representation on the record, and I think
5 we should go to the matter at hand.

6 MR. ROTH: Yes.

7 BY MR. ROSENBERG:

8 Q Mr. Frielen, are you presently employed?

9 A No, sir.

10 Q Have you ever been employed?

11 A Have I ever been employed? For a good many
12 years.

13 Q By whom were you employed?

14 A Well, I was with the American News Company
15 for 48 years.

16 Q When did your employment relationship with
17 American News begin, if you can remember the year?

18 A '68, that's when it ended. It ended in
19 '68. Well, 48 years.

20 Q That is 1920 to 1968?

21 A That's about right.

22 Q Is your age 68, sir?

23 A I was born in 1904. This is 1972. I am 68.

24 Q Did you work for any company prior to 1920?

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2 that kind.

3 Since you have retired from the American
4 News Company in 1968 have you been employed by any
5 other company?

6 A No, sir.

7 Q Do you presently own any shares of stock
8 in American National Services?

9 A No, sir.

10 Q Do you presently receive a pension or other
11 form of payment?

12 A Yes, sir.

13 Q You do. What was the first position you
14 held with the American News Company?

15 A Book salesman in Hartford, Connecticut.

16 Q During what years were you in that position?
17 More or less.

18 A Well, I was in Hartford for three years.

19 Do you want me to go on all the way, all my employment?

20 Q If you would trace your employment record
21 with American News Company that would be --

22 -- in Hartford for three years and then transferred
23 to Buffalo, I think in 1927. Stayed there 14
24 years --

2 went along to state the capacity?

3 THE WITNESS: Well, I was still in the book
4 business in Buffalo. I was transferred to Detroit in
5 charge of the book department. Made assistant manager
6 in Detroit. I was there approximately two years. Was
7 transferred to Cincinnati as manager of the Cincinnati
8 News Company. Transferred from there to New York for
9 ten months. Transferred from there to Dallas, Texas,
10 as manager --

11 Q Of what?

12 A Of the Texas Division.

13 Q Of the American News Company?

14 A American News Company. I was there five
15 years. I was transferred back to New York, with no
16 title, and I was sent to Chicago, Illinois, as manager
17 of the Western News Company which was owned by the
18 American News Company.

19 Spent three years there. Transferred back
20 to New York with no title. Finally I was made manager
21 of the -- I was in Chicago three years -- transferred

22 back to New York as manager of the American News

23 Company, what we called home branch. That was

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Frielen

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2 of the American News Company. And when I was made
3 executive vice-president I can't remember.

4 Can you?

5 MR. ROTH: That is not --

6 A (Continuing) And stayed there until,
7 well, I was made executive vice-president after that
8 and retired in 1968.

9 Q When you were vice-president of the
10 American News Company from 1955 to some date thereafter
11 were you in charge of any particular division of the
12 American News Company?

13 A Well, I was in charge of what we called
14 home branch, which was New York City and the outlying
15 branches of the New York operation.

16 Q The American News Company is composed of
17 several subsidiary companies; is that correct?

18 A Right.

19 Q Let me correct that.

20 Was composed of several subsidiary com-
21 panies when you were affiliated with them?

22 ~~Right.~~
23 Q Is the Union News Company one of those
24 companies?

25

A

Now you are you talking about it?

2 Q The period when you were vice-president of
3 the American News Company.

4 A Yes. Yes. I believe it was a separate
5 corporation.

6 MR. ROTH: Well, what Mr. Rosenberg is saying,
7 accepting the fact that at some point it was no longer a
8 separate corporation but became a division --

9 THE WITNESS: That's right.

10 Q Do you know the year or approximate date when
11 the Union News Company became a division of the American
12 News Company?

13 A Do I know what?

14 Q The year when the Union News Company became
15 a subdivision of the American News Company?

16 A No, I don't remember what year it was.

17 Q Was it during your tenure as vice-president?

18 A Yes, I believe it was.

19 Q What were your responsibilities as vice-
20 president of American News?

21 A I was in charge of the book department,
22 the statistical department, the New York Division.
23 New York Division.

24 Q I take it that the American News Company

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2 other articles were sold to the public?

3 A I believe they had three or four retail
4 book shops at that time which they -- they didn't last
5 long. They closed them up.

6 MR. ROTH: I think Mr. Rosenberg's ques-
7 tion goes beyond that. All right, go ahead.

8 Q Were the books or magazines sold to the
9 public at any other outlets other than the three or
10 four retail outlets to which you have just referred?

11 A I don't understand your question.

12 Q Were the books and magazines sold to the
13 public at newsstands?

14 A From the American News Company?

15 Q That is correct.

16 A Yes, they were.

17 Q Were the newsstands a part of the Union
18 News Company?

19 A Not all of them. At that time we had -- I
20 believe we had 20,000 newsdealers in New York City that
21 we used to supply magazines to.

22 Q Independent newsstands?

23 A Yes.

24 Q Did you --

2 the Newark Public Library and places of that kind.

3 Q Did you also distribute to Union News news-
4 stands?

5 A Yes, we did.

6 Q During these years when you were vice-
7 president of the American News Company did you become
8 familiar with the operations of the Union News Company?

9 A Not especially, no.

10 Q Were you familiar with the newspaper sale
11 division of the Union News Company?

12 A Not a bit. Not a bit.

13 Q No familiarity whatsoever?

14 A Nonewhatsoever.

15 Q Can you recall the approximate time when
16 you became executive vice-president of American News?

17 A It must have been in the '60s. '63 or '64,
18 somewhere in there.

19 Q That was the last position you held with
20 the company?

21 A Executive vice-president.

22 Q That was the last position?

23 A That's right.

24 Q During those years were you familiar with

2 A Not especially. I had very little to do
3 with the Union News Company operations. Very little.

4 Q Were you familiar with the operations of
5 the newspaper division of the Union News Company?

6 A I was not.

7 Q No familiarity whatsoever?

8 A None whatsoever.

9 Q Do you recall, sir, the arrangement that
10 the Union News Company had for the purchase of news-
11 papers from publishers and for the resale of newspapers
12 to the public during the years when you were either
13 vice-president or executive vice-president?

14 A I knew something about the newspaper
15 business.

16 Q Do you know now, or can you recall whether
17 the Union News Company purchased the papers directly
18 from the publishers or from intermediate distributors?

19 A I believe they got them directly from the
20 publisher.

21 Q And sold them directly to the public?

22 A Apparently.

23 Q Are you familiar with something called the

24 pink slip system?

2 discussion about pink slips.

3 Q Favorable or unfavorable?

4 A I don't know what I would say whether it
5 was favorable or unfavorable.

6 Q Why don't you first describe it as best
7 you recall it?

8 A Well, it was a little piece of paper about
9 that big (indicating), and I used to see the girls down
10 the Union News Company filing them and asking what they
11 were. They were pink slips from the newspapers.
12 This is about all I knew about them.

13 Q Do you know, or do you recall now what
14 information was recorded on the pink slips?

15 A I am going to answer the question, but --

16 MR. ROTH: If you don't know --

17 THE WITNESS: I don't know, except I
18 believe that's where the slip was made out by the
19 driver. That's all I know about it.

20 Q The driver is the man who distributed the
21 newspapers for the publishers to the newsstand outlets?

22 Yes, that's who I would call the driver.

23 Q And he would indicate how many newspapers

24 were dropped off at each newsstand outlet?

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2 know.

3 Q Were the pink slips the basis upon which
4 bills were furnished to Union News?

5 A Again I can't honestly answer the question
6 and be truthful. I think so.

7 Q You don't recall today, or you never knew?

8 A I never knew.

9 Q You don't know how the billing arrangements
10 were made with each of the newspapers whose newspapers
11 were sold by Union News?

12 A I do not.

13 Q Mr. Frielen, to the best of your
14 knowledge did Union News Company purchase newspapers
15 from the various New York publishers for the same price
16 per copy as each of the other newsstands in the New
17 York area during the years --

18 A I couldn't answer that question.

19 Q Do you recall, sir, whether at any time
20 during your tenure as vice-president, or executive
21 vice-president, the Union News Company was offered any

22 rebates by any of the newspaper publishers?

23 A I couldn't -- I don't know. I don't
24 know.

2 allowances or price concessions by the newspaper
3 publishers?

4 A I wouldn't know.

5 Q Do you recall for example whether the Union
6 News Company would give them any discount on the price
7 of each copy of the New York Times sold by the Times
8 Company to Union News?

9 A I don't know that, either.

10 Q Do you recall whether at any time in the
11 early 1960s or thereafter the Union News Company entered
12 into arrangements with any of the newspapers whereby
13 the newspapers agreed to pay Union News a stated sum of
14 money for the right to display promotional materials at
15 Union News outlets?

16 A I couldn't -- I don't know that answer,
17 either.

18 Q You don't recall whether any arrangement
19 was entered into?

20 A No, sir.

21 Q Do you recall whether any of the Union News

22 stands had posters, or placards or other display
23 materials at their stands advertising various newspapers?

24 A I don't ever remember seeing any.

1 mt

2 Q During what years were you a commuter in
3 and out of New York City?

4 A From 1953 to 1968.

5 Q Was it your habit, or regular practice, to
6 purchase a newspaper at a newsstand in Grand Central
7 area?

8 A Usually.

9 Q In the morning or the evening?

10 A Evening.

11 Q What newspaper did you purchase?

12 A I can't remember.

13 Q Did you purchase it at a Union News stand?

14 A Usually, yes. Drop a dime and run.

15 Q You don't recall though whether there were
16 any display materials for the Post or the World
17 Telegram --

18 A I don't remember seeing any.

19 Q Mr. Frielen, can you recall whether in any
20 of your business dealings you met a man named Ivan
21 Veit, an employee of The New York Times Company?

22 A Never heard of him.

23 Q How about Nathan Goldstein?

24 A I met him a couple of times.

2 Q Can you describe the circumstances of
3 these meetings?

4 A It wasn't a meeting.

5 Q Were they social?

6 A Social.

7 Q Social gatherings?

8 A Just said hello to him, that was all.

9 Q Do you know what position he held with The
10 New York Times Company?

11 A I think he was circulation manager, but I
12 am not sure of that.

13 Q Did you ever have occasion to discuss with
14 him the relationship between the Union News Company
15 and The New York Times Company?

16 A Never.

17 Q Or the sale of newspapers generally in New
18 York City?

19 A Never.

20 Q In the course of your business did you
21 ever come to meet Byron Greenberg of the New York

22 Post?

23 A Never heard of him.

24 Q Neither socially nor in business?

25

2 Q Do any of the following names ring a bell
3 with respect to the New York Daily News: Jack
4 Underwood?

5 A No, sir.

6 Q Bruce McCawley?

7 A No, sir.

8 Q Bill Carey?

9 A No, sir.

10 Q Dudley Feldman?

11 A No, sir.

12 Q Bob Rohrbach?

13 A No, sir.

14 Q Sidney Cornish?

15 A No, sir.

16 Q Did you know any of the following gentlemen
17 at The Wall Street Journal: Edgar Roll?

18 A No, sir.

19 Q John Potulney?

20 A No, sir.

21 Q John McCarthy?

22

23 Q In the course of your business did you

24 ever meet or have any dealings with Edwin Fancher or

25

2 A No, sir.

3 Q As vice-president or executive vice-
4 president of American News did you come into contact
5 with any of the circulation managers or circulation
6 directors or persons performing roughly the same
7 function as a circulation manager or director of any
8 of the newspapers published in the New York area?

9 A No, sir.

10 Q Do you recall whether a Federal Trade Com-
11 mission investigation in 1959 concerned itself with
12 the American News Company? Can you recall any such
13 investigation?

14 A Magazines.

15 Q Relating to magazines?

16 A Yes.

17 Q What do you recall of that investigation,
18 sir?

19 MR. ROTH: Isn't that too broad a question?

20 MR. ROSENBERG: I will narrow it, if you
21 prefer.

22 Q Mr. Frielen, did you testify before the
23 Federal Trade Commission in that investigation?

24 MR. ROTH: If you remember? If you

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2 A I don't remember whether I did or not.

3 The only remembrance I have of that was going to
4 Washington with Mr. Roth, and I don't remember what
5 year that was.

6 Q Can you recall in connection with what you
7 went to Washington? Now, I don't want to pry into
8 lawyer-client privileges, but if this is unprivileged
9 material, can you disclose what the purpose of the trip
10 was?

11 A Well, I'll give you the whole story of the
12 trip. Mr. Roth and I flew to Washington one morning
13 and met some gentleman there, if you want to call him
14 a gentleman, and talked to him about the magazine
15 business, and we came home and had lunch just outside
16 LaGuardia Airport.

17 That's how long the meeting was.

18 Q This was a meeting that occurred sometime
19 on or after 1959 as best you recall?

20 A Well, somewhere in there. Somewhere in
21 there.

22 Q Do you believe that this was in connection
23 with the 1959 Federal Trade Commission hearing?

24 A On magazines;

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2 A There was never any discussion of news-
3 papers.

4 Q At any time did you read the testimony that
5 was given at those Federal Trade Commission hearings?

6 A I don't remember any.

7 Q You don't remember seeing a transcript of
8 those hearings?

9 A No, sir.

10 Q Do you remember seeing an order of the
11 Federal Trade Commission relating to the American News
12 Company?

13 A No, sir.

14 Q Do you recall being advised by any member of
15 the American News Company, any employee or officer of
16 the American News Company --

17 A I believe so. Clancy, Mr. Clancy was
18 representing the American News Company, I think, at
19 that time. I think Mr. Roth had been bypassed, or
20 something, I don't know what happened. And we rebated
21 the magazine publishers, I don't know, \$60,000 or

22 \$60,000, something like that.

23 That's about all I remember. I remember I

24 had to bring in some girls on a Saturday and go through

25 all these records. And I remember I

2 Q Do you recall whether Mr. Clancy, or
3 whether anyone else at the American News Company,
4 ever showed you a copy of the Federal Trade Commission
5 order that grew out of these hearings?

6 A I am sure nobody ever did.

7 Q And you don't now recall what the substance
8 of that order was, do you?

9 A No.

10 Q Mr. Frielen, I am going to hand you an
11 exhibit, I am going to hand you a piece of paper
12 which I would like the reporter to mark as Government's
13 Exhibit 1 for identification. If you will take a
14 minute to read it, then indicate to me when you have
15 finished reading it, please (handing).

16 Have you read it?

17 A Yes.

18 MR. ROSENBERG: Mr. Reporter, would you mark
19 this as Government's Exhibit No. 1 for identification,
20 please.

21 (One-page copy of memorandum on letter-
22 head of the American News Company, dated October
23 24, 1962, aboveresferred to, was marked
24 as Exhibit No. 1 for identification
25 this date.)

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2 BY MR. ROSENBERG:

3 Q Mr. Frielen, do you recognize what this is
4 a copy of (handing)?

5 A A letter that I had signed.

6 Q This is a letter over your signature dated
7 October 24, 1962?

8 A That's right.

9 Q On the American News Company letterhead;
10 is that correct?

11 A Yes.

12 Q Do you recall having written this letter?

13 A I didn't write the letter. I signed it,
14 but I didn't write it.

15 Q Did you read the letter?

16 A Of course I read it.

17 Q Before it went out?

18 A I presume so. Sure.

19 Q Let me draw your attention to the second
20 paragraph of the letter.

21 Backtracking for just a moment, do you
22 know to whom this letter was directed?

23 A No, I really don't.

24 Q Now, when you say, to the class,

25 class or individually?

2 MR. ROSENBERG: Either way.

3 Q Mr. Frielen, in the course of this lawsuit
4 between the United States and Ancorp the government
5 served on the defendant some interrogatories, legal
6 questions, and one of the questions asked whether the
7 defendant ever entered into a contract or agreement --
8 I am skipping -- with publishers of newspapers under
9 the terms of which the publishers agreed to pay to
10 defendant a rebate, price allowance or other compensa-
11 tion in connection with defendant's promotion or sale
12 of newspapers on its newstands.

13 The defendant answered that question in
14 this fashion:

15 "The defendant entered into certain
16 arrangements with newspapers for price allowances
17 by way of credits and payments."

18 The following interrogatory asked, in part,
19 part 2V, what affirmative actions defendant took to
20 determine whether said newspaper publishers were
21 offering such payments to other owners or operators
22 of newsstands, and the defendant answered, in part on

23 2: "The defendant issued requests to its suppliers

24 in a letter dated October 24, 1962."

25 Then the defendant gives another example of

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2 what it did by way of affirmative action.

3 Now, I just want to set the context of
4 this letter for you. This letter, Government's Exhibit
5 No. 1 marked for identification in this deposition, is
6 the letter to which the defendant, that is Ancorp,
7 referred in answering the interrogatory that I just
8 read to you. Bearing that in mind I draw your atten-
9 tion to the second paragraph of the letter in which
10 you state:

11 "We are sure that you are aware of the
12 special character of our newsstand operations
13 and the conditions which we must meet in order
14 to be able to continue in business to provide
15 the kind of service we are under obligation to
16 offer, with some expectation of profit in the
17 interests of our many stockholders to whom we
18 owe a duty as a publicly-held company."

19 Now, I ask you, sir, whether that refreshes
20 your recollection as to whom this letter was sent?

21 A I can't remember.

22 Q It does not.

23 A This letter, all this letter is talking
24 about is magazines. Nothing to do with newspapers.

25 Q You recall that about the letter?

2 A It had to be. I know that, because I
3 had nothing to do with newspapers at all. This was only
4 because of that magazine mess that we got into, if
5 you call it a mess.

6 Q Well now, what is the special character of
7 your newspaper, your newstand operation to which you
8 refer in the second paragraph of this letter?

9 A Magazine business.

10 Q I am sorry.

11 What is the special character of the news-
12 stand operation?

13 A Gee, I don't know. I wouldn't know. I
14 told you I didn't write this letter.

15 Q I see.

16 A I signed it, but I didn't write it.

17 Q Did you agree with the substance of it
18 before you signed it?

19 A Well, apparently it was given to me to be
20 signed, and I signed it.

21 Q Can you recall who drafted it?

22 A No.

23 Q Can you recall who would have given it to

2 Q In the course of - -

3 A That's ten years ago.

4 Q I appreciate that.

5 As vice-president, or executive vice-
6 president of the American News Company who were the
7 officials, if any, who were in a position to hand you
8 a letter for you to sign which you would sign without
9 having drafted it?

10 A Either Mr. Garfinkle or an attorney.

11 Q Returning now to the second paragraph of
12 that letter, you refer to the conditions which you must
13 meet in order to be able to continue in business.

14 Do you recall what conditions those were?

15 A No.

16 Q Mr. Frielen, I read to you the defendant's
17 answer to our second interrogatory, but I perhaps did
18 not stress one word. In describing this very letter
19 the defendant said that it issued requests to its
20 suppliers as set forth in a letter dated October 24th,
21 1962.

22 Do you recall, sir, whether this letter
23 was sent to your suppliers, that is to say, the news-

paper publishers who supplied him with newsprint?

24 Yes, sir, that is correct.

2 A I don't know, but I don't believe that
3 this was sent to any newspaper publishers because this
4 had nothing to do with newspapers.

5 Q This would have been sent to magazine
6 publishers?

7 A I think probably it would have been, but I
8 can't remember.

9 Q But in any event it would not have gone
10 out over your signature if it related to newspaper
11 publishers?

12 A No. I had nothing to do with newspapers.

13 Q Let me draw your attention to the fourth
14 paragraph of the letter which reads in its entirety
15 as follows:

16 "We will assume that any offers to grant
17 us any such discounts, rebates or allowances
18 will constitute a representation by you to us
19 that they are equal, or proportionately equal
20 to those offered to newsstands which are compet-
21 ing with us, and that this will apply to the

22 portion of the future of any such payments
23 to us."

24 Do you recall...

25 ...

2 outlets that any of the persons to whom this letter
3 was sent were offering you any discounts, rebates or
4 allowances?

5 A No.

6 Q None came to your attention?

7 A None.

8 Q Did you, sir, take any steps to determine
9 whether rebates, allowances or discounts were offered
10 to Union News by any magazine or newspaper publishers?

11 A I don't quite understand your question.

12 Q You say in the letter, and I don't want to
13 argue with you, this is merely a way of presenting it,
14 that you will assume that any offers to grant dis-
15 counts, rebates, et cetera will constitute a representa-
16 tion that they are being made to Union News competitors.

17 A Well, let me explain this to you.

18 Q Please do.

19 A All of these magazine rebates, discounts,
20 whatever you want to call them, all cleared through me.
21 Now, the reason that this was so was because I was in

22 the magazine business for most of my life, and any

23 agreement made with a magazine publisher cleared me.

24 And, what was I trying to explain to you?

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2 A (Continuing) Well, all those would have
3 cleared me. And no publisher would have gone, I don't
4 believe, to anybody but me on rebates or allowances or
5 whatever you want to call them.

6 Q Do you recall whether there were any rebates,
7 price allowances, price concessions, discounts or any
8 other word connoting the same transaction after the
9 date of this letter, October 24, 1962?

10 A I don't remember that.

11 Q Would such arrangements for rebates and
12 so on have come to your attention if they were entered
13 into?

14 A Magazines they sure would have.

15 Q With respect to magazines?

16 A Sure they would.

17 Q So that if any magazine publisher were
18 offering a discount on the wholesale price of his
19 publication to Union News, you would pass on that
20 offer first?

21 A Yes, sir.

22 Q And that would not be true of newspaper
23 publishers?

24 A No, sir.

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2 newsstands which are competing with you.

3 A Well, let me say this --

4 Q I have not asked you a question yet.

5 There were newsstands that were in compe-
6 tition with Union News, were there not?

7 A There were? This has always been a sore
8 spot in my mind when I was with the News Company. How
9 could they compete with us. They were mama and papa
10 stands and corner drugstores. They weren't doing a
11 newsstand business such as we were. They didn't have
12 unions.

13 Q Well, I didn't mean competing successfully
14 with you. I just meant whether they competed with
15 you.

16 A I never thought they competed with us. I
17 thought that we were in there by ourselves.

18 Q So that when you signed this letter you
19 did not mean to adopt this as your position, that is,
20 you did not mean to confirm that Union News had com-
21 petitors?

22 A I don't know how to answer that question.
23 MR. WATKINS: Well, he asked you a question.

24

25

2 The question is whether you didn't intend
3 to accept the fact that there were competitors just
4 because somebody put it in the letter.

5 THE WITNESS: No. No.

6 Q Your position, sir, is that the mama and
7 papa newsstand operations which sold papers to the
8 public were not in competition with Union News?

9 A Not papers; we're talking magazines.

10 Q Magazines.

11 A Yes. They opened up for two hours a
12 day, three hours a day. We were open some places 24
13 hours a day. Maybe not that long, but 8 or 10 or 12
14 hours a day.

15 Q You are saying now, if I understand you--
16 and correct me if I am wrong -- that Union News didn't
17 have any competitors in the market of selling magazines
18 to the public?

19 A Well, we had people selling magazines to
20 the public, but whether you term them as competitors,
21 I doubt that you could call them competitors.

22 Q But you are not saying that Union News
23 no competitors in the sale of newspapers to the public.

25 A I had nothing to do with newspapers.

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2 don't know anything about the newspaper business.

3 Q Mr. Frielen, I am going to hand you a copy
4 of another letter, or, memorandum, and ask you to take
5 a moment to look at it. It is two pages long.

6 When you have finished it I will ask the
7 reporter to mark this as Government's Exhibit No. 2 for
8 identification (handing).

9 You have finished reading it, sir?

10 A Yes.

11 MR. ROSENBERG: Mr. Reporter, would you mark
12 this Government's Exhibit No. 2 for identification,
13 please.

14 (Two-page copy of memorandum, above
15 referred to, was marked Government's Exhibit No.
16 2 for identification this date.)

17 BY MR. ROSENBERG:

18 Q Mr. Frielen, do you recognize what this
19 is a copy of (handing)?

20 A No. I see that one of them came to me,
21 but I -- I must have seen it, but I don't remember it.

22 Q This appears to be a copy of a memorandum
23 from Henry Gansinkle, president of American News --

24

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2 executives of the American News Company --

3 A That's right.

4 Q (Continuing) -- and the Union News Company
5 dated March 8, 1963; is that correct?

6 A That's right.

7 Q And it says, if I may quote for a minute,
8 that:

9 "The following is the language of a cease
10 and desist order issued against us by the
11 Federal Trade Commission as modified, affirmed
12 and endorsed by the United States Court of
13 Appeals for the Second Circuit."

14 The order is then set forth in full, and
15 I take it you have read it?

16 A That's right.

17 Q At the conclusion of the order Mr. Gar-
18 finkle says,

19 "All officers and executives must
20 familiarize themselves with the substance
21 and import of this order, and must report
22 promptly any information from any source
23 whatsoever which might indicate the existence

24

25 potential violation of the above order with

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2 respect to any contract, programs, plans or
3 agreements to which the American News Company
4 or the Union News Company is a party."

5 Now, I notice that on the cc's the first
6 copy is to go to you, Mr. Herbert Frielen, executive
7 vice-president.

8 A Right.

9 Q Do you recall what steps you took to carry
10 out Mr. Garfinkle's directive?

11 A What steps?

12 Q Yes. What did you do to familiarize your-
13 self with the substance and import of this order?

14 A Well, I knew what he was talking about.

15 Q What was he talking about?

16 A Our magazine rebates.

17 Q So, what did you do?

18 A I don't know as I did anything.

19 Q I believe that Mr. Garfinkle suggested that
20 you should report promptly any information from any
21 source that might indicate the existence of a present
22 violation.

23 A If there was any.

24

25

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2 or agreements which Union News had with publishers
3 to determine whether there were any rebate agreements
4 in existence?

5 A Talking about magazines. I believe this
6 is after we made these refunds. Now, I'm not sure of
7 that, because of the date.

8 MR. ROTH: Mr. Frielen, the question
9 is whether any rebate came to your attention, or did
10 you try to look for any afterward, after you cleaned
11 up the rebate situation in the magazines?

12 THE WITNESS: No, because there wouldn't
13 have been any because they all had to clear my desk.

14 Q Your testimony is that at the time this
15 order came down there were no refund agreements in
16 effect between Union News and publishers; is that
17 correct?

18 MR. ROTH: By the time which order came
19 down?

20 MR. ROSENBERG: I am sorry. At the time
21 Mr. Garfinkle's order of March 8, 1963 to the executives
22 of the Union News and American News came down there
23 were no refund agreements in effect.

25

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2 A I wouldn't have allowed it.

3 Q But if there would have been one in effect
4 you would have called this to Mr. Garfinkle's attention?

5 A No, I wouldn't have called it to Gar-
6 finkle's attention.

7 MR. ROTH: What would you have done?

8 THE WITNESS: Nothing. Stopped it.

9 MR. ROTH: Well, that is what I mean.

10 That isn't nothing.

11 Q And so far as you recall, after the date
12 of this letter there were no further offers for refund--

13 A There might have been offers.

14 Q But you turned them down; is that right?

15 A That's right. There were no violations,
16 let's put it that way.

17 Q You interpreted this letter which
18 incorporated an order of the Federal Trade Commission
19 to relate only to magazines; is that right?

20 A Correct.

21 Q So that you did not attempt to discover

22 whether or not there were any refund agreements or

23 rebate agreements and so forth with any newspaper.

24

25

2 Q And if there had been, it would not
3 necessarily have come to your attention?

4 A That's correct.

5 Q Mr. Frielen, I'm going to hand you a copy
6 of what appears to be an invoice dated March 21, 1961,
7 and after you have had a chance to read it would you
8 hand it to the court reporter to be marked as
9 Government's Exhibit No. 3 for identification.

10 (Copy of invoice dated March 21, 1961,
11 above-referred to, was marked Government's
12 Exhibit No. 3 for identification this date.)

13 BY MR. ROSENBERG:

14 Q Mr. Frielen, have you ever seen the bill
15 or invoice of which this is a copy before (handing)?

16 A No, sir.

17 Q This is the first time you have seen it?

18 A Yes, sir.

19 Q It appears to be a bill or invoice on the
20 letterhead of the Union News Company directed to Mr.
21 Nat Goldstein, circulation director of the New York
22 Times dated March 21, 1961, and it says, "Partial ad
23 space in newsstands for advertising signs at \$2,000

2 to be?

3 A What it appears to be, yes.

4 Q Were you familiar with the arrangement
5 under which The New York Times paid Union News \$2,000
6 per month for space in newsstands for advertising signs?

7 A No, sir.

8 Q This is the first time that you have become
9 aware of such an arrangement?

10 A That's right.

11 Q Would you know who at the Union News
12 Company would have issued this bill or invoice?

13 A No, sir.

14 Q Would such a bill or invoice have been
15 issued without your approval?

16 A Sure.

17 Q In 1961 the Union News Company was a part of
18 the American News Company; is that correct?

19 A Was either a subsidiary or a separate
20 company, I don't know which.

21 Q But you were not directly responsible for
22 the operations of the Union News?

23 A No, sir.

24
25 August 17, 1971. Mr. William McCollough gave evidence.

2 Do you know Mr. McCollough?

3 A Very well.

4 Q What position does he hold, or did he hold,
5 with the American News Company when you knew him?

6 A Well, he was an assistant vice-president,
7 and later made executive vice-president, and I
8 believe today he is president. He became president
9 after I left there.

10 Q He followed in your footsteps; is that
11 correct? As executive vice-president.

12 A No, no. He followed in Strassman's foot-
13 steps.

14 Q In the course of Mr. McCollough's deposi-
15 tion the following questions and answers were given,
16 beginning at page 10, line 7:

17 "Q That's all right. It is not necessary to
18 do that.

19 "Now, what was the purpose of this price
20 allowance, if you know, sir?

21 "A Well, the purpose, as I understand it,
22 this price allowance -- of course this was set up
23 prior to coming into the picture -- is that we were to

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2 "In other words, if a paper was selling
3 in town for fifteen cents, we would maintain a fixed
4 price that the paper set for the same out-of-town
5 price.

6 "Q You say this was fixed before you came into
7 the operation; is that right?

8 "A Yes.

9 "Q From whom did you get your understanding as
10 to the purpose of this price allowance?

11 "A This price allowance, of course this was
12 handled prior to my time by our executive vice-
13 president at that time, Mr. Frielen."

14 That concludes at line 2 of page 11.

15 MR. ROTH: I might say, Mr. Rosenberg, Mr.
16 McCullough I believe in some later testimony hedged on
17 the question of whether it was Mr. Frielen and subse-
18 quently advised me that he intends to change that testi-
19 mony in the further deposition in any event.

20 Q Well now, Mr. Frielen, does that passage
21 from Mr. McCullough's deposition refresh your recollec-

22 tion as to whether you were familiar with the price

23 allowance arrangements that existed between Union News

24 Company and newspaper publishers?

25 I was not familiar with it, sir. Yes.

1 27

2 Q Following the entry of the Federal Trade
3 Commission order which Mr. Garfinkle referred to in
4 his memorandum of 1963, which we have marked as an
5 exhibit in this deposition, what steps, sir, did you
6 take to determine whether the Union News Company had
7 any rebate or price allowance or price concession agree-
8 ments with any newspaper publishers?

9 A None.

10 Q Did any arrangements for price allowances,
11 price concessions or rebates with newspaper publishers
12 come to your attention?

13 A Never.

14 Q Were you aware at any time subsequent to
15 Mr. Garfinkle's letter and until your retirement of
16 arrangements for promotional display allowances between
17 the newspaper publishers and Union News Company?

18 A Never.

19 Q When was the first time that you learned
20 that the Union News Company had such arrangements?

21 A I am trying to think. Give me a minute.

22 I believe that I know there were some allowances, or
23 rebates, or whatever you call it, right along. But I

24 never got into them. Never knew anything about them.

25 When Mr. Roth and I went to Washington nothing came up

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2 on newspapers.

3 Q My question was directed to contracts,
4 or more informal arrangements for promotional allow-
5 ances to be paid by the newspapers to Union News
6 Company for the privilege of displaying placards or
7 other advertising material at Union News stands.

8 My question is, sir: At any time prior to
9 today did you come to know that such arrangements
10 existed?

11 A Did I come to know?

12 Q Yes.

13 A No, sir, I did not come to know.

14 Q Prior to this deposition you had no
15 knowledge whatsoever that there were such arrangements
16 in existence?

17 A No, sir. Not cards and all that sort of
18 thing. I thought that there must have been some
19 arrangements with newspapers. What they were I didn't
20 know.

21 Q Some arrangements for what?

22 A Rebates and allowances and things of that
23 kind. What they were --

24 Q But this is an assumption you are making.

25 A That's right.

2 Q You don't know the terms of these arrange-
3 ments?

4 A It's an assumption, that's all.

5 Q Mr. Frielen, did you pay for your transpor-
6 tation expenses from Georgia to New York City?

7 A Yes, but I'm going to collect from some-
8 body.

9 Q Whom do you plan to collect from?

10 MR. ROTH: Well, because I asked him he is
11 going to ask me. I am hopeful of getting it from you.

12 MR. ROSENBERG: I have no further questions
13 at this time.

14 EXAMINATION BY MR. ROTH:

15 Q Mr. Frielen, Mr. Rosenberg referred you to
16 this letter of October 24, 1962 sent out under your
17 signature, and he asked you a question in connection
18 with the first sentence, or, the first part of the
19 second paragraph which says:

20 "We are sure that you are aware of the special
21 character of our newsstand operations and the
22 conditions which we must meet in order to be
23 able to continue in business."

24 At first you answered that you didn't know
25 what that special character was. Then in later testi-

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2 mony you mentioned the fact that there was no compe-
3 tition, and that you referred to the time that the
4 stands had to be kept open.

5 Now, isn't it a fact that you were aware
6 of the special character of the Union News operation
7 generally because when they sold magazines and comic
8 books and paperbacks they also sold newspapers in most
9 of the stands?

10 MR. ROSENBERG: Objection.

11 MR. ROTH: What is your objection?

12 MR. ROSENBERG: You're leading your own
13 witness.

14 MR. ROTH: He is not my own witness. He is
15 your witness.

16 MR. ROSENBERG: He is an adverse witness,
17 even if I call him.

18 Q Coming down to the special character of
19 the operation, generally is it a fact that the stands
20 were in either terminals or special locations, such as
21 hotels and under particular leases?

22 A That is correct.

23 Did these leases require a special order at

24 for the stands in each location?

25 A That's right. And high rents.

2 Q Did they require in various instances par-
3 ticular hours of operation?

4 A That's correct.

5 Q Do you know whether stands in most of the
6 terminals were required to be open on Sundays and
7 holidays, or at least some of the stands?

8 A Some of the stands.

9 MR. ROSENBERG: You are referring now to
10 Union News stands?

11 THE WITNESS: Yes.

12 MR. ROTH: Yes. Union News stands is all
13 we are talking about.

14 Q And you had union contracts with the
15 employees in all these stands?

16 A Right.

17 Q Were there special requirements with respect
18 to the maintenance of the stands, that is the
19 cleanliness, the painting and the repair and so forth?

20 A That's right.

21 Q Were there requirements with respect to how
22 merchandise was to be delivered to the stands?

23 A I don't know about that.

24 Q Were they delivered directly to the stands?

25 A They were delivered directly to the stands.

2 MR. ROSENBERG: Who is "they"?

3 THE WITNESS: American News. Union News.

4 They make their own deliveries.

5 Q That is of magazines?

6 A Yes, that's right.

7 Q But when Union News discontinued its --
8 when American News discontinued its wholesale branches
9 even in this area who made the deliveries?

10 A Union News.

11 Q Where did the deliveries come from?

12 A No, they were made by the independent
13 wholesaler. After 1957.

14 Q Exactly. That is what I am driving at.

15 Were there instances where in a terminal
16 the independent wholesaler was not permitted to bring
17 the merchandise directly into the terminal, but into a
18 place nearby, or outside the terminal, and then had to
19 be brought into the terminal by the Union News employee?

20 A Well, there might have been some instances
21 such as that, but I don't remember,

22 MR. ROTH: May we have this copy of a
23 letter dated November 21, 1962 from the Federal Trade
24 Commission to the American News Company marked
25 Defendant's Exhibit A for identification.

2 (Three-page copy of above-identified
3 document was marked Defendant's Exhibit A for
4 identification this date.)

5 BY MR. ROTH:

6 Q Mr. Frielen, will you take a look at this
7 Defendant's Exhibit A marked for identification and
8 tell me whether you now recollect receiving the letter
9 (handing).

10 A Well, I don't really remember the letter.
11 I presume I received it. I remember doing a hell of a
12 lot of work getting all that information together.

13 Q The first sentence of this letter says:
14 "Reference is made to this division's
15 letter of October 19, 1962 and subsequent con-
16 ference with Messrs. Roth and Frielen of the
17 Union News Company of November 7, 1962."

18 Is that the conference that you referred
19 to in your testimony before?

20 A Yes, that's the only time I was down there.

21 Q Does this letter, Defendant's Exhibit A
22 marked for identification, tend to refresh your
23 recollection about that conference?

24 A Yes, I remember the conference.

25 Q I mean, further detail beyond what you

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2 mentioned in your direct testimony?

3 A No.

4 Q Let me direct you to number 7 on the last
5 page of that letter,

6 "List of all magazines and publications
7 (excluding daily newspapers) which were offered
8 for sale by Union News stands and with respect to
9 each said publication state the name of the
10 publisher and national distributor."

11 Do you recall any conversation in connec-
12 tion with that matter of excluding daily newspapers?

13 A No, sir.

14 Q Do you recall whether there was a discus-
15 sion in which you and I were told that the entire matter
16 was to be considered as excluding newspapers?

17 MR. ROSENBERG: Objection.

18 A Should I answer that?

19 Q Yes.

20 A No, not really. I don't remember that. I
21 know all of our conversation was regarding magazines.

22 MR. ROTH: That is all.

23 MR. ROSENBERG: I have no redirect examina-
24 tion.

25 MR. ROTH: By the way, there is one other

2 question, just to clarify things:

3 You talked about magazines. Isn't it a
4 fact that the subject of the magazines as far as you
5 are concerned included comic books and paperbackbooks?

6 THE WITNESS: That's right.

7 MR. ROTH: That is all.

8 MR. ROSENBERG: I have nothing further.

9 (Time noted: 3:20 o'clock p.m.)

10

11

12

13 Subscribed and sworn to before me

14 this day of 1972.

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CERTIFICATE

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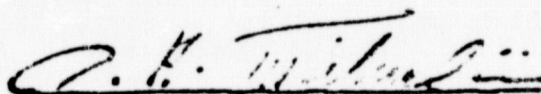
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3 STATE OF NEW YORK,)
4 COUNTY OF NEW YORK.) ss.

5 I, C. A. Michaelini, a certified shorthand
6 reporter and notary public of the State of New York,
7 do hereby certify:

8 That Herbert Frielen, the witness whose
9 deposition is hereinbefore set forth, was duly sworn
10 by me and that such deposition is a true record of the
11 testimony given by such witness;

12 I further certify that I am not related to
13 any of the parties to this action by blood or marriage,
14 and that I am in no way interested in the outcome of
15 this matter.

16 In witness whereof, I have hereunto set my
17 hand this 12 day of October 1972.

18 
19 Notary Public.
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WITNESS INDEX

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52

Name

Page

Herbert Frielen

2

EXHIBIT INDEX

Government

Page

1 (1d) One-page copy of memorandum on letter-head of the American News Company, dated October 24, 1962.

22

2 (1d) Two-page copy of memorandum.

33

3 (1d) Copy of invoice dated March 21, 1961.

38

Defendant

A (1d) Three-page copy of above-identified document.

48

LETTER OF TRANSMITTAL FROM DELSON & GORDON, ESQS., TO HON. DUDLEY B. BONSAI
(September 24, 1973)

LAW OFFICES
DELSON & GORDON
230 PARK AVENUE
NEW YORK, N. Y. 10017

(212) MU 6-8030
CABLE: 'DELEGOR'
TELEX: 236153

1228a

WASHINGTON, D. C. OFFICE
1900 L STREET N.W.
WASHINGTON, D. C. 20036
(202) 633-9540

September 24, 1973

The Hon. Dudley B. Bonsai
United States Courthouse
Foley Square
New York, New York 10007

Re: United States v. Ancorp
National Services, Inc.
70 CIV. 5770

Dear Judge Bonsai:

We are submitting herewith the defendant's post trial memorandum.

Also submitted herewith are defendant's Exhibits D, E, F and H, which are the only documents in the possession of the undersigned.

We are also submitting herewith the following depositions:

- 1) Louis M. Loeb, Times counsel
- 2) William Welkowitz, Daily News Circulation Director
- 3) Herbert Frielen, Defendant Vice President
- 4) Joseph J. Gerke, FTC Asst. Dir.

It should be noted that the Gerke deposition is merely attached because of the instruction letter from the FTC after the Court of Appeals affirmance which specifically excludes any report on newspaper activities.

The Frielen deposition is submitted only as to one reference in our trial memorandum in which Mr. Frielen was of the opinion that the proceeding and the order related exclusively to magazines.

The Loeb and Welkowitz depositions are submitted to substantiate defendant's position and specific references are made in our memorandum thereto.

We also respectfully refer to the Reynolds FTC deposition and the Newborn deposition to which references are made in our memorandum.

The Hon. Dudley B. Bonsal

-2-

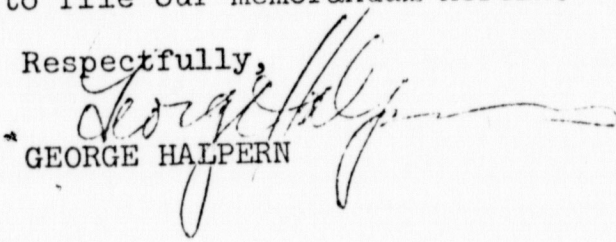
September 24, 1973

The above four depositions are being submitted on the basis of the understanding that the Court would accept additional documentation in support of the position of either the Government or the defendant in order to avoid any extension of the within trial.

We appreciate the Court's courtesy in granting us an extension of time to file our memorandum herein.

Respectfully,

GH:SRM
Enc.


GEORGE HALPERN

CC: Gerald A. Rosenberg, Esq.
Asst. United States Attorney

State of New York) ss
County of New York)

That on the 18th day of

October 19 74 he served a copy of the within

Appendix

Saxe, Bacon, Bolan & Manley, Esqs.,
39 East 68th St.
New York, NY 10021

And deponent further says
he sealed the said envelope and placed the same in the
mail chute drop for mailing in the United States Courthouse,
 Foley Square, Borough of Manhattan, City of New York.

Pauline Trow

18th day of October 19 74

Walter E. Travis

WALTER G. BRANNON
 y Public, State of New York
 No. 24-0394500
 Qualified in Kings County
 Cert. filed in New York County
 Term Expires March 30, 1975

